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PREFACE.

THE importance of the Fisheries of Scotland as a subject of national industry and commerce, and the high value which they possess as an item in the wealth of the country, render it unnecessary that any apology should be offered for discussing in a separate treatise the law which regulates them. The subject is, in some points of view, a narrow one; but the occurrence of constant and various litigation, involving questions of difficulty and importance, may be considered as sufficient evidence, not only that the subject is of general interest, but that it includes many questions of nicety, for the solution of which a careful application of general principles and of special rules is essentially requisite.

The frequent and complicated legislation of recent years affecting the Salmon Fisheries of Scotland justifies, it is thought, and even requires an attempt to present a distinct and condensed view of the enactments of Parliament and the Bye-laws of the Salmon Fishery

Commissioners, and of their bearing and results as regards the property of individuals.

In the following pages, the Author, while avoiding discursiveness, has endeavoured to treat the subject comprehensively and yet briefly. Special attention has been directed to such questions as are likely to arise in practical experience; and while there are, it is feared, many omissions, it is hoped at the same time, that principles are indicated which will assist the reader in supplying the defect. In the preparation of the work, it was at first intended that a division of the subject more logical, and in some respects more satisfactory, should be adopted. If the first part of the Treatise could, consistently with clearness, have been devoted to Title and Acquisition of the Right, and the second part to Exercise and Protection of the Right, something would have been gained at least in apparent symmetry and order; but it was found that it would have been at the cost of proper continuity of treatment, and with the result of needless repetition and subdivision. These subjects, however, along with others, comprising, it is hoped, all that are directly connected with the law of fishing, have been discussed in convenient order. The Appendix contains the principal Statutes, and all the Bye-laws of the Commissioners under the Salmon Acts.

To return special thanks to all from whom assistance has been received, would be a task pleasing to the

Author, but wearisome to the reader. If to any of his friends, or to the public, labour in research is saved, or solution of doubt suggested, the main object of the work will be accomplished.

EDINBURGH, 11 FORRES STREET,
October 1868.

Note.—While the following pages were in the press, the Salmon Fisheries (Scotland) Act of 1868 became law. The alterations introduced by the Statute, though essential as amendments of preceding legislation, are few and unimportant, and affect only the minor details of the system of management introduced by the Act of 1862. Owing to the late period of the Session at which the Act passed into law, it was impossible to include the alterations in the text of the present treatise; but the Act itself is printed in the Appendix, and reference to its provisions will be found under the appropriate headings in the Index.

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CHAPTER I.

FISHING IN THE SEA AND PUBLIC RIVERS GENERALLY.

AS the air is common to all men, and incapable of appropriation by individuals, so is the sea common to mankind for fishing and navigation. But this proposition, in so far as the right of fishing is concerned, although it might at one period have been accepted without restriction, has, in process of time, been subjected to certain limitations,—(1.) In respect of the portion of the sea over which the common rights of mankind extend, and (2.) in respect of the kinds of fish which can be captured therein and appropriated. In so far as the right of fishing is concerned, the sea is divided into the ocean or open sea, and the territorial sea or *mare proximum*, which washes the coasts of the kingdom, and which, subject to the universal right of navigation, is appropriated as accessory to the coast which commands it. These waters are vested in the sovereign as a *jus publicum* for the good of the lieges (*a*). The

(*a*) Dig. lib. xliii. 8. 3; Grotius lib. 2 cap. 3; Vattel, i. 279–295; Puffendorf, iv. 5, vii. 8; Craig's Jus Feudale, 1. 15. 13; Wildman's International Law, p. 70; Stair, 2. 1. 5. and 2. 3. 76; Bankton, 1. 3. 3; *Officers of State* v. *Smith*, 1846, 8 D. 711, pp. 718 and 722; 6 Bell's App. 487; *Paterson* v. *The Marquis of Ailsa*, 1846, 8 D. 752; Hale, *De Jure Maris*, p. 10. According to the division of the Roman Law, the open sea comes under the denomination of *res communes*, while the territorial sea would be one of the *res publicæ*, Ersk. 2. 6. 17. The *res publicæ* of the Roman law are now vested in the sovereign for the good of the lieges. They are all said to be *inter regalia*, but it must be remembered that some of the *regalia* are held by the king as *jura publica*, while others are *jura privata*. Grotius, 2. 3. 10; 9 Geo. ii. c. 35; 6 & 7 Vict. c. 79.

territorial sea is considered as extending as far as the range of cannon shot from the land, or more specifically, three miles (*b*) seawards from the coast line, and includes the *mare clausum*, all bays, creeks, and inlets, even where the enclosing headlands are more than three miles apart, and a line drawn from the one headland to the other is more than three miles distant from the innermost point of the bay. Moreover, with respect to bays, the mouths of which do not exceed ten miles in width, the three mile distance is measured outwards from a straight line drawn from headland to headland.

The right of fishing in the open sea is common to all men and to all nations, and may be exercised without title, licence, or authority of any kind (*c*). All fish whatsoever, not excepting salmon (*d*), whales, or other royal fish, captured outside

(*b*) Vattel (1. 23. 289) thinks that this precise definition can only be founded on the general assent of nations, which it would be difficult to prove. Each state can make such regulations in the matter as seems good to them, in so far as concerns its subjects *inter se*, or their relations to the sovereign. But between nation and nation all that can be said with reason is, that in general the dominion of a state over the surrounding sea extends as far as it is necessary for its safety, and as it can enforce respect to its rule. Practically, however, the three mile limit is recognised in this country as established (Selden, *Mare Clausum*, 182), and in the Fishery Convention between Great Britain and France the same limit has been fixed on. The law of nations defined the seas belonging to a country as extending a cannon shot from the coast, and three miles was fixed on as a definite distance. This space would, in the present time, require to be much extended to answer the definition; but whether the rights of Great Britain must be proportionally extended is a question of little practical importance. Stair (2. 1. 5) speaks of the territorial seas as including all that are in view of the shore.

(*c*) Various statutes for the promotion and encouragement of the whale and herring fisheries were formerly in operation, but they have all now been repealed or fallen into desuetude.

Whale fishers were formerly subjected to a tax, but by a statute so early as 2 & 3 Ed. vi. c. 6, the necessity for a licence was abolished.

Seamen engaged to whaling vessels were formerly affected by the statute 50 Geo. iii. c. 108, but their employment is now regulated by the Merchant Shipping Acts.

(*d*) *Per* Lord Wensleydale in *Gammell* v. *Commissioners of Woods and Forests*, 1859, 3 Macq. 465. In that case there was no question in regard to the public right *to the sea* in all its uses, including that of fishing. The effect of the decision is of course not to prohibit the coast proprietors, or any one, from fishing in the high seas from shipboard, or to deprive them of any other rights which would be common to foreigners by the principles of international law.

the limits above defined, become, by the law of nature, the property of the captor.

Regarding the exercise of the right of fishing in the open sea which is frequented by fishermen of all nations, and where the jurisdiction of no particular nation is paramount (*e*), a law founded on the customs of the locality, or specially provided by international convention, is administered. Disputes occasionally arise among the fishermen at the deep sea fishing stations, and these questions, when brought before the courts of this country, are decided either according to rules fixed by international convention, or on principles settled by the customs of the locality, which customs however, in order to be binding, must be clearly understood and universally acted on. Any number of persons may, however, by compact among themselves, renounce any advantages, and subject themselves to any disadvantages that they please; but this would bind those only who have assented to it. Questions relating to whale fishing, herring fishing, and oyster and mussel fishing, will be specially noticed hereafter.

As regards the territorial seas, the right of fishing is limited to the subjects of the country to which the water pertains. The law of this country recognises the rule that subjects of one country are not entitled to fish in the territorial seas of another country without a licence from the crown or sovereign authority. The fisheries in the seas surrounding Great Britain and France have been made the subject of special convention between the two countries; and regulations, which will be afterwards adverted to, have been laid down fixing the mutual rights of the fishermen of both nations.

There is no restriction on any subject of the realm fishing for white fish in any part of the territorial seas of this

(*e*) Each nation has, however, jurisdiction over its own subjects in its own ships, *Forbes* v. *Cochrane*, 2 Barn. and Cress. 448. See also American case of Mariana Flora, 11 Wheaton's Reports, 38.

island (*f*). With the exception of salmon, and of oysters and mussels, which will be treated of separately (and the right to fish for which even on the sea-coast is decided to be a *jus privatum* of the sovereign), the right of fishing in the sea is essentially *juris publici*, and may be exercised by any one, in any manner of way, and at any time, unless forbidden by special statutory prohibitions.

Nature of the right of white fishing in the territorial seas.— The right of white fishing in the territorial seas of Scotland may be considered, in one sense, as vested in the crown, but it is held, not as a patrimonial property, but, like the right of navigation, for behoof of the public (*g*). It has not been expressly decided, and may still perhaps be considered as an open question, whether a crown grant to an individual of an exclusive right to fish in the sea for white fish can be sustained. In England the right of the crown to make grants of a several fishery in the sea was abolished by Magna Charta; and in Scotland, the better opinion seems to be that no title is competent to sustain an exclusive right (*h*). In spite of this

(*f*) The Acts 1631, c. 39; 1690, c. 34, and 29th Geo. iii. c. 23, encouraged all the lieges to take fish in all seas, channels, firths, etc., and a premium was given for catching them; and any one interrupting a fisher catching white fish was subjected to a penalty of £100.

(*g*) Vinnius in his Commentaries, lib. 2. tit. 1, p. 160, narrates a constitution of the Emperor Frederic, by which navigable rivers, and the right of fishing therein, was declared to be *inter regalia*. Vinnius, however, observes that this constitution does not hinder the *use* of rivers from still continuing public, though the *property* of them be transferred to the prince, 'nam et riparum quarum proprietas privata est, usum esse publicum constat.' See also Craig, 1. 16. 38. The discussion of the question however is only of antiquarian interest, for the law at present undoubtedly stands as above stated.

(*h*) Ersk. 2. 6. 6; Bankton, 2. 3. 3; Stair, 2. 3. 69; Bell's Prin. 646. With the single exception, perhaps, of Craig (1. 15. 15. and 2. 8. 15), the institutional writers for the most part agree upon this point, but the opinion of Stair is qualified by a doubt which he expresses as to the meaning of the clause *cum piscationibus* simply, or 'of fishing in salt water;' he thinks however that the import of the phrase, when occurring in a conveyance, *may be* that in white fishings, if these run upon such a title, a prescription of interrupting and hindering others to fish whatsoever sort of fish, it will constitute a property thereof which could not consist without this clause, or the like: But this doubt is satisfactorily disposed of by Erskine, who,

doctrine, which seems to be the general result of the authorities in the law of Scotland, there exist, no doubt, many instances of grants of white sea fishings from the crown (*i*) connected with lands, particularly in Banffshire; and it is asserted that several such are entered and valued in the valuation books, and have been computed in making up a freehold qualification (*k*). But the validity of such a grant has never been judicially recognized (*l*), and is generally doubted. The institutional writers, as we have seen, are not perfectly unanimous in considering the right as incapable of appropriation, but there appear to be no cases in the books expressly recognising the validity of an exclusive grant to floating fish in the sea (*m*). It is true that in the case of the *Duke of Portland* v. *Gray* (*n*), the Lord Ordinary (Corehouse)

adopting Stair's admission that the right of white fishing in the sea is common to all, affirms that no right common to mankind can be taken away from one and acquired by another, by interrupting particular persons from the use of it for the longest course of time. Erskine, however, in this passage somewhat misapprehends Stair, in supposing that he was laying down the law upon the subject, whereas he was merely indulging in speculation. *Vide* also *Nicol* v. *Blaikie*, 1859, 22 D. 335; Lord Justice-Clerk Inglis' opinion. The case of *Carmichael* v. *Colquhoun*, M. 9645, 20 Nov. 1787, sustained an exclusive right to trout fishing, but this does not extend, as has been supposed by some, to the case of common fishes in the sea. *Vide* Lord Monboddo's opinion in *Kelly* v. *Ramsay*, 1776; Hailes, 722; and Lord Justice-Clerk Patton's opinion in *Duchess of Sutherland* v. *Watson*, 1868, 6 Macph. 199.

(*i*) In Bell's Election Law, p. 52, will be found a list of twenty-six instances of charters conveying white fishings in the sea; and at least as many more, with a number of infeftments, have been discovered. Crown charters usually contain in the tenendas clause the words, 'piscationibus,' etc. It is included in the form of a tenendas clause given by Stair (2. 3. 15). Such a clause may have reference to trout fishings in streams which passes as a part and pertinent of lands. It cannot of course refer to salmon, which, besides requiring express mention, must also be contained in the dispositive clause. In the case of lands bounded by the sea, its presence in crown charters is perhaps ominous; but after all the expression does not go beyond what Stair describes as the common style followed 'in all charters 'both by king and subjects.' See also Chalmers' Caledonia, i. 782.

(*k*) Wight's Election Law, p. 199; Bell's Election Law, p. 52; *Gordon* v. *Duff*, 1773, M. 8656; *M'Leod* v. *Blair*, 1773, noted *ibid.*

(*l*) Lord Justice-Clerk Hope in *Hall* v. *Whillis*, 14 D. 325.

(*m*) In the last case in which the point was mooted (*Duchess of Sutherland* v. *Watson*, Jan. 1868, 6 Macph. 199), the judges recognised the question as an open one, and declined to express any opinion upon it.

(*n*) 15th Nov. 1832, 11 S. 14.

let fall an opinion adverse to the doctrine now maintained, but as this appears to be the sole dictum in the books in favour of the admissibility of such a right, and as the opinion, moreover, appears to be founded on a misapprehension as to the state of the previous authorities on the point, and as the case under his Lordship's immediate consideration related not to the right to fish for floating fish, but to oysters and limpets, such an *obiter dictum* will probably not be considered as throwing any important doubt upon the general principle. Lord Corehouse says, 'There are many grants in Scotch char-'ters of a right of fishing of white or floating fish in the sea, 'the legality of which, though not expressly recognised, seems 'to have been taken repeatedly for granted in the proceedings 'of the Court; and Stair and Erskine, though not very ex-'plicit or distinct on the subject, incline to that opinion.' The views of Stair and Erskine on this point have already been considered, and it will be observed that they do not bear out Lord Corehouse's estimate of them, inasmuch as they undoubtedly incline to the opinion of the incompetency of an exclusive grant to floating fish. The cases which were referred to in the Duke of Portland's action in support of the competency of an exclusive grant (*o*), and which were adopted to the same effect by Lord Corehouse, appear, on examination, not to have referred in any instance to grants of floating fish in the sea, but exclusively to oysters and shell fish, and in one instance to trout in a river. The subject of oysters and shell fish will be referred to more particularly hereafter, but it may be taken here as a point of settled law, that a right to fish oysters and mussels in the sea from the scalp or bed to which they are attached, may be appropriated. The decisions establishing this point were quoted with aptitude for the pursuer in a case like that of the *Duke of Portland* v. *Gray*,

(*o*) Monimusk, M. 10783; Queensberry, M. 14251; Duff, M. 14257; Grant, M. 12801; Carmichael, M. 9645; Braid, M. *voce* Property, App. i. No. 2; Boucher, 30 Nov. 1814, F. C.; Wallace Agnew, 27 Nov. 1822, 2 S. 42.

which referred exclusively to a right to shell fish, but they are erroneously cited as supplying instances of a judicial recognition of the competency of an exclusive grant to floating fish. It may be observed also, that the existence in old Scottish charters of exclusive grants to white fishing in the sea,—a fact which, however inconclusively, has so often been cited in favour of their competency,—may be accounted for by viewing them as implying only, in the intention of the granter, an exclusive right to the oysters and shell fish. Such a construction would imply no strained construction of the expression 'white fishings;' and it is unquestionable that grants of this kind have, in the use following thereon, met only with this limited interpretation at the hands of the grantees. The existence of exclusive grants to white fishing in the sea, construing them even in their widest signification, is an argument altogether inconclusive of their competency, in the absence of judicial recognition of their validity; but if they can be construed, as may reasonably be done, as referring merely to oysters and shell fish, and importing no pretension to an exclusive right to floating fish, the chief argument would be removed which can be pleaded in favour of the possibility of the existence of such a monopoly. The validity of an exclusive grant of white fishing in the sea has been maintained not only on the footing of such a right being *inter regalia* like salmon fishing, but also on the ground that all fishings, by the old law of Scotland, formed part of the feudal or heritable estate vested in the king as superior of the whole heritage of the realm (*p*). On the whole, it is thought, although

(*p*) The authorities, besides these already noticed, which appear to support the argument in favour of white fishings in the sea being *inter regalia*, or at least of their being heritable estate capable of exclusive grant from the crown, seem to be Craig, 1. 15. 15 *et* 17, 2. 8. 15; *Livingstone* v. *Breadalbane*, 1791, M. 4999; 2 Paton's App. 221; Ross' Lectures, ii. p. 6 *et seq.* and 172. The law relative to fish teinds, Stair, 2. 8. 1, 2. 8. 5, 2. 8. 6; Ersk. ii. 10. 1; ii. 10. 10; ii. 10. 13. Old Scotch Acts showing all rights of fishing to belong originally to the king, 1575, c. 60; 1587, c. 57; 1661, c. 39; 1690, c. 34; 1705, c. 2; 1690, c. 31. Opinion of Lord Medwyn in *Gammel's* case, 1851, 13 D. 855; Hale, pp. 11, 17, 18; Sir J.

there has been no decision on the point, that an exclusive right of white fishing in the sea would not now be sustained.

Whatever the common law may at one time have been,—and whether the right of white fishing in the sea, which the lieges now possess, be founded on ancient law or solely upon royal licence and statutory authority,—the right is now unquestionably a public one. It has been supposed that even if the right of white fishing in the sea were incapable of appropriation by grant alone, that it might become so if followed by prescriptive use by the grantee, and also by prescriptive use of excluding others, which might imply their consent to the alienation of their right. However this may have been, no title would now be considered sufficient to exclude the public. The Act 29 Geo. ii. c. 23, entituled 'An Act for encouraging the fisheries in that part of Great 'Britain called Scotland,' provided that, 'Whereas the ex-'tending and improving of the British fishery is of great 'importance to this kingdom, as it not only adds considerably 'to the national wealth, but is, moreover, a fruitful nursery 'of able seamen for the public service; and whereas the same 'is greatly restricted by certain restrictions, exactions, and 'regulations, to which the fishers and curers of fish in North 'Britain are subject either by custom or the laws now in force: 'And whereas it further appears that it would be very advan-'tageous to trade in general as well as to the fishery if the

Davies' Report of Banne Fishery case. On these authorities it was pleaded, in the latest case in which the question was raised,—(1.) That all rights of fishing are, in common with salmon fishing, feudal estate by the law of Scotland, and that as such they were all originally vested in the king as paramount superior of the whole feudal estate of the realm. (2.) That consequently other fishings, as well as salmon fishing, could, by the common law of Scotland, be validly made, as they were in use to be made, the subject of feudal grant by the crown, and of exclusive right by the crown grantee. (3.) That the lieges had not, by the common law of Scotland, any right of taking white or floating fish in the narrow seas or public rivers of the realm. (4.) That any right which the lieges in progress of time acquired, or now have, to take white or floating fish, is founded solely upon royal licence and statutory authority. The question thus raised was not decided. *Duchess of Sutherland* v. *Watson*, Jan. 1868, 6 Macph. 199.

'said exactions and restrictions were taken off, and such new 'regulations made as are more accommodated to the present 'circumstances of both: And whereas by an Act made in the 'third session of the first Parliament of the late Queen Anne 'in Scotland, entituled "An Act for establishing the fishery '"trade in and about that kingdom, all her Majesty's subjects '"of that kingdom are authorised and empowered to take '"and cure herring and white fish in all and sundry the seas, '"channels, bays, firths, lochs, rivers, and so forth, of that '"her Majesty's kingdom and islands thereto belonging, '"whatsoever herring or white fish are or can be taken; and '"for their greater conveniency to have the free use of all '"ports, harbours, shores, forelands, and others, for bringing '"in, pickling, drying, unloading and loading the same, upon '"payment of the ordinary dues where harbours are built, '"that is, such as are paid for ships, boats, and other goods; '"and discharges all other exactions, such as one night's '"fishing in the week, commonly called Saturday's fishing, '"top money, stallage, and the like." And for the further 'explaining, enforcing, and amending the said law, may it 'please your most excellent Majesty that it may be enacted, 'and be it enacted by the King's most excellent Majesty, by 'and with the advice and consent of the Lords Spiritual and 'Temporal, and Commons in this present Parliament assem-'bled, and by the authority of the same, that from and after 'the twenty-fifth day of June, one thousand seven hundred 'and fifty-six, *all persons whatsoever, inhabitants of Great* '*Britain, shall, and they are hereby declared to have power and* '*authority at all times and seasons, when they shall think proper,* '*freely to take, buy from fishermen, and cure, any herrings, cod,* '*ling, or any other sort of white fish in all and every part of the* '*seas, channels, bays, firths, lochs, rivers, or other waters, where* '*such fish are to be found, on the coasts of that part of Great* '*Britain called Scotland, and of Orkney, Shetland, and all other* '*islands belonging to that part of Great Britain called Scotland,*

'*any law, statute or custom to the contrary notwithstanding.* And 'if any person or persons whomsoever shall, after the twenty-'fifth day of June, one thousand seven hundred and fifty-six, 'under any pretence whatsoever, presume to obstruct or 'hinder any person or persons from fishing as aforesaid in 'moonlight nights, or at any other time whatsoever, in all or 'any, or in any part of the said seas, channels, bays, firths, 'lochs, rivers, or other waters as aforesaid, or shall demand 'or receive any gratuity or allowance whatsoever, either in 'money, fish, or otherwise, under the name of Saturday 'night's fishing, or under any other name or pretence what-'soever, from any fisherman or other person for the liberty of 'fishing, in all or any, or in any part of the said seas, channels, 'bays, firths, lochs, rivers, and other waters as aforesaid, 'every such person shall for every such offence respectively 'forfeit the sum of one hundred pounds sterling, to be re-'covered in manner hereinafter directed, any law, usage, or 'custom to the contrary notwithstanding.'

Salmon fishing, and oyster and mussel fishing, in the sea, are capable of grant from the sovereign, but an exclusive grant of either will not exclude the public from fishing for white fish in the same locality, provided their operations do not affect injuriously the superior right. The right of fishing for floating fish in the sea, other than salmon, being inalienable and not capable of valid grant from the crown to an individual, prescription will not serve to perfect such a right; for prescription is not effectual to remedy this kind of defect; it will validate a title flowing *a non habente potestatem*, but where the subject alienated is in its nature incapable, by law, of alienation, no grant or prescriptive use of it can serve to effect its transfer.

Fishing in Navigable Rivers.—'Navigable' rivers are, like the sea, public, and the right of fishing therein for white fish is common to all. The principle on which such waters are held to be public is, that they are the natural highways of the

country, and that it is for the common advantage that they should be open to all, for the purposes of transport. The riparian proprietors are not recognised as having any exclusive right to the water; and the right of fishing therein, for white fish, not being appropriated to any individual, is thus common to all the subjects of the realm. The exact definition of a public navigable river—at least in so far as it affects the public or private character of the right of fishing therein—is a somewhat difficult question, and little light has been thrown upon it by the authorities. As regards the right of navigation, it would be apart from the purpose of this treatise to inquire closely into the distinction between rivers where it may be carried on by the public, and rivers where it would be an intrusion on private property (*q*). It may be assumed, however, that the public right of navigation is not limited to those portions of a river where the tide ebbs and flows; for, as it is clear that there are many cases in which a river is navigable for the smaller kind of vessels for a considerable distance above tide mark, so it cannot be doubted that these rivers, to the full extent of their capability for that purpose, are open to the public for navigation (*r*). But the capability of a river for navigation, even when the right of navigation alone is in question, appears to be a very indefinite term, and one which (when the lightness and draught of water of canoes or cobles are considered) may be applied in some sense to almost every

(*q*) In *Angell on Watercourses* (p. 552), there is an elaborate discussion on the American law relating to rights of navigation, and on the distinction between rivers *boatable* and *navigable*.

(*r*) Bell's Prin. 648. Rivers are public for navigation above tidal waters, where they are fit for the transportation of the country products, though that should be only *down* the stream. *Grant* v. *Duke of Gordon*, 1781, M. 12820; 2 Paton, 582; Sir J. Colquhoun, 1793, M. 12827; 4 Paton, 221. The principle of distinction between public and private rivers, as regards rights of navigation, is more definitely laid down by the French law, which declares the test to be, capability of navigation, without artificial operations for deepening the channel: 'Declarons la pro-'priété de tous les fleuves et rivières portant bateaux de leur fond, sans artifice et 'ouvrages des mains . . . faire partie du domaine de notre couronne.'—*Repertoire de Jurisprudence, l'art.* 41 *du tit.* 23 *de l'ordonnance des eaux et forets de* 1669. See also *Woobrych on the Law of Waters*, p. 41, and cases there cited.

river in Scotland. Still more would the test of capability for navigation be vague and unsatisfactory, if it were to be held as the criterion deciding the public or private character of the right to fish. The better opinion seems to be, that though, in loose and inaccurate language, the right of fishing and the right of navigation are classed together as being both *juris publici* in public navigable rivers, the two rights are not really commensurate, and that the test which regulates the public or private character of a river in regard to the one privilege, does not necessarily regulate its character in regard to the other. The public right of navigation in a river may be assumed to extend as far upwards from the sea, irrespective of the tide, as navigation can be usefully and practically exercised (*s*); but the public right of fishing probably extends no farther than the ebb and flow of the tide, or to those waters where the influence of the salt water is perceptible. The English (*t*) and Irish (*u*) authorities appear to countenance this idea; and the test, besides, being definite and unambiguous, is founded on more than one acknowledged principle of the law. That part of a river where the sea ebbs and flows, is of the same nature as the sea itself; and the white fish of the sea, the only kind to which the public privilege of fishing extends, are to be found only in those waters where the influence of the tide is perceptible. The soil or *alveus* of a 'public river' also belongs to the crown (*x*); and as it is classed to this effect along with the sea, there can be little doubt that the royal right extends no farther than the ebb and flow of the tide (*y*).

(*s*) See note (*r*) *ante*.

(*t*) Sir John Davies' Report of the Banne Fishery Case, p. 149; Paterson's Fishery Laws, p. 32; Hale de Jure Maris, c. 2. p. 8; Comyn's Digest. 'Prerogative,' 50, vol. 7, p. 70.

(*u*) See the case of *Murphy* v. *Ryan*, reported in *The Field* of 28th March 1868, in which it was decided by an unanimous judgment, that the public right of fishing did not extend as far up stream as the right of navigation, nor further than the flow of the tide.

(*x*) *Per* Lord St Leonards in *Lord Advocate* v. *Clyde Trs.*, 1 Macq. 49; Woolrych on the Law of Waters, p. 41; Schultes' Aquatic Rights, p. 128.

(*y*) The argument is strengthened by the circumstance, that in a recent Act

Assuming this to be the limit of the crown's right to the *alveus*, a just and definite measure is at once supplied for estimating the extent of the royal (or public) right of fishing. Although this seems to be the most just and accurate principle for estimating the extent of the public right of fishing in rivers, there seems to be no express decision on the subject; but the case of *Grant* v. *The Duke of Gordon* (*z*), where the pursuer sought to establish a right to send at all times floats of timber down the river Spey, and where such a right, subject to certain regulations, was sustained, throws some light upon the question. The river Spey, at this part of its course, is much above the influence of the tide, and is capable of navigation only in a very limited sense, being used only for the floating of timber, and that only down stream, and when the river was swelled beyond its ordinary size by a high flood. The Court however held, and the House of Lords, on appeal, sustained, the doctrine, that a river, by which the produce of the country can be transported to the sea, is a public benefit vested in the king as *pater patriæ* for his subjects in general, and can neither be given away nor abridged by his grants. It is not likely, however, that though the Spey was held to be a public river for purposes of navigation, that the right of the public to fish therein for white fish would be sustained over the whole upper parts of the stream on which timber logs could be floated in time of flood (*a*). The assertion of such a right would be adverse to various decisions where the exclusive

(29 & 30 Vict. c. 62, § 7), by which the rights of the Crown in the shore and bed of the sea and public rivers is transferred to the Board of Trade, navigable rivers are thus dealt with only 'as far up the same as the tide flows.'

(*z*) 9th March 1781, M. 12820; 2 Paton, 582.

(*a*) In further illustration of the distinction between rivers public as regards the right of navigation, and rivers public as regards the right of fishing, and in proof that the two rights are not co-extensive, it may be remarked, that a river may be public as regards the right of fishing, and yet not practicable for navigation. The tide may ascend and descend in a small river, where no navigation can be carried on, and in such a case there would be a public right of fishing. The converse has also been shown to be a possible circumstance.

right of the adjacent proprietor to fish for trout *ex adverso* of his lands, has been sustained, and the effect of its admission would be to alter materially the established rights of numerous riparian proprietors (*b*).

The right of the public to fish for white fish in the sea, and in public rivers, which, as we have seen, may be exercised by them in any way and at any time not prohibited by statutes passed for the public good, must be carried on so as not to interfere with another and superior public right, namely, that of navigation. A mutual obligation on the other hand exists on navigators so to navigate their vessels as to inflict as little inconvenience as possible on those exercising the subordinate right of fishing. The same rules will be enforced even where the right of fishing is carried on by an individual in virtue of an express grant; and no title however specific will be admitted to sustain a method of fishing which proves to be obstructive to the navigation (*c*). In the case of *Grant* v. *The Duke of Gordon* (*d*) the defender produced a grant from the crown to cruive fishings in the river Spey, in pursuance of which he had erected across the river cruive dikes, which the pursuers alleged interfered with their right of floating timber down the stream. The pursuers produced no title to their alleged right, but relied on the right of the public at common law to the navigation of the stream independent of any rights of fishing that might exist. This right was sustained by the Court of Session and by the House of Lords on appeal; and the pursuer was ordered so to regulate his fishing as not to incommode the superior right of navigation. In another case also (*e*) a similar doctrine was maintained, and it was found that a right of salmon fishing in a river could not be exercised to the preju-

(*b*) The question of the extent of the public right of fishing in rivers is at present under discussion in the Sheriff Court of Morayshire.

(*c*) Craig 1. 16. 11. Ivory's Ersk. ii. 357, note.

(*d*) 9 March 1781, M. 12820.

(*e*) *Colquhoun* v. *Duke of Montrose*, 1793, M. 12827.

dice of the navigation. It was observed here by the Bench, that the channel of a public river is *juris publici*, and that the crown, though it can grant a right to the salmon fishing therein, cannot give any right to place a permanent obstruction in the channel, and that no length of time can authorise its continuance.

Use of shore in connection with public right of fishing.—The bed or *alveus* of the high sea is public in its fullest sense, and is therefore incapable of appropriation; but the *solum* of the territorial seas, and of navigable rivers, and that part of the soil or shore which is between high and low water mark, and which is called the foreshore, are public only in a limited sense. Their true character has been a matter of much dispute, and has never been the subject of express decision. According to one view of the question, they are vested in the crown, by virtue of the prerogative, for the benefit of the public, and their management is intrusted to the Admiralty, as representing the interests of navigation. According to the other view, which seems more in consonance with the general tendency of authority on this and cognate subjects, and which is supported by the latest dicta of the judges (*f*), they are part of the patrimonial estate of the crown, and belong as a beneficial property to the sovereign. That they should so be considered seems a necessary consequence of the circumstance that the crown may divest itself of this property by grant to an individual; for if the right was merely a fiduciary one, held for the benefit of the public, it would be inalienable, and the rights of the public could not be defeated by an exclusive grant to one of them (*g*). A

(*f*) *Duchess of Sutherland* v. *Watson*, Jan. 1868, 6 Macph. 199. Lord Neaves' opinion.

(*g*) *Officers of State* v. *Smith*, 1846, 8 D. 711; 6 Bell's, App. 487; *Paterson* v. *The Marquis of Ailsa*, 1846, 8 D. 752.

'The *terra firma* of England has become almost entirely the property (by grant 'or tenure) of the subject; but the *terra aqua maris cooperta* still remains to the

claim has been put forward in more than one instance on behalf of the crown, asserting a right to the foreshores of Scotland, and to the *alveus* of public streams as patrimonial property, and not merely as a trust held for behoof of the public. The question of the character of the crown's right was raised in the case of *The Lord Advocate* v. *The Clyde Trs.* (*h*); but the point was not decided, and was expressly recognized as a *quæstio vexata* (*i*). It would be beyond the purpose of this treatise to pursue this question further; for so far as the right of white fishing at any rate is concerned, it is certain that no exclusive right to the use of the shores could be

' king in wide and barren ownership. Some rare and antique instances may indeed ' be found of actual grants by kings of England of certain portions of land under ' the sea, *i.e.* of both sea and land to a certain extent. These grants have been ' made in such places where some creek or bay has afforded the means of exclusive ' possession.'—*Hall on Sea Shores*, p. 2–5.

(*h*) 1852, 1 Macq. 46.

(*i*) But see remarks of Lord Neaves in *Duchess of Sutherland* v. *Watson*, Jan. 1867, 6 Macph. 199. His Lordship, though it was unnecessary for the decision of the case before him, seems to have arrived at the conclusion, that the foreshore is part of the patrimonial estate of the crown, and that the royal right extends not only to the shore between high and low water mark, but out into the sea so far as the line which defines the limits of the British empire. Valuable assistance at any rate has been given to the argument in favour of the crown's patrimonial right to the foreshores by the decision that the right to mussels is of this character. These fish, which are *partes soli*, being found to be in *patrimonio principis*, and the right to minerals below the foreshore, being of the same kind, the conclusion is almost necessary, that the shore and *solum* itself, with which both are indissolubly connected, belongs in property also to the crown.

An interesting controversy is at present being carried on between the Duke of Argyle, as representing the public, and the Commissioners of Woods and Forests. The Duke, intending to erect a pier on the sea shore of his property at Roseneath, requested the permission of the Admiralty to do so. The request was met by a claim by the Commissioners of Woods and Forests, who asserted a right on behalf of the crown to the patrimonial property of the foreshores of the kingdom, and required the Duke, before making any erection thereon, to take a disposition of the *solum* from the crown, and to pay a sum of money as a price therefor. The demand, which is alleged has been admitted in numerous instances, was resisted by the Duke, who offered at once to refer the question to the decision of a court of law. The offer was not accepted; and after consultation with their law advisers, the crown appears to have tacitly foregone their claim. A significant conclusion to the controversy may be found in an Act which which came into operation on 1st Jan. 1867, by which the management of the foreshores of the kingdom is transferred from the Commissioners of Woods and Forests, the custodians of the crown's patrimonial property, to the Board of Trade.

established by the crown, and that the public uses of the foreshores in relation to white fishing will not be interfered with; for, though the right of the crown to the foreshores and *solum* of the territorial sea be a patrimonial one, and though a grant may be made of these subjects to an individual, the right thus conferred is subject always to the inextinguishable rights of the public, among which may be reckoned the rights of navigation and of fishing for white floating fish. And it may be observed in passing, that even in the event of the crown succeeding in establishing a patrimonial right to the soil between high and low water mark, the interests of those who enjoy the public right of fishing would not suffer, inasmuch as the right of fishing for white fish in the sea (no right to exclude the public from which has ever been pretended), is almost universally carried on from boats or vessels, independently of the shore. The right of salmon fishing, on the other hand, which is unquestionably a patrimonial property of the crown, is carried on in connection with the shore; but a right to the use of the shore passes, as will be seen hereafter, along with the fishings. The right to the use of the shore in connection with the salmon fishings passes to the grantee; but this right has never been considered as capable of excluding the public from its use for other purposes; and even if the crown's patrimonial right to the foreshore were established, and placed on a similar footing to the right to salmon fishings, it is not to be supposed that the right could ever be granted to an individual, to the effect of excluding the public from the ordinary uses of the shore. The decision of this question, though, so far as can be seen at present, practically unimportant as regards the right of fishing, is of the highest importance as affecting the question of piers and harbours. The right of the Lords of the Admiralty to regulate the erection of such appliances is unquestioned; but the successful assumption by the crown of the right to the patrimonial property of

the soil on which they are erected, would seriously affect the existing rights of many of the community.

The shores of the sea and the banks of public rivers may be used by the public in aid of the right of white fishing (*k*). These subjects however, being vested in the crown, may be granted to any individual for his use in connection with a grant of salmon fishings, or for any other purpose not inconsistent with or detrimental to the primary and preferable uses of the public. If the sea or seashore be described as the boundary of a property, the grant is construed to include the shore to the ebb-mark, and to extend or recede with the waters (*l*); the shore, or what is covered at ordinary high water, being still subject to the use of the public. The grantee of the crown can have no right of dominion or true property in the shore, for such a grant must always be impliedly subject to certain public uses. It may not be very easy to specify or define all the public uses to which the shore is subject, but the most obvious are those which are necessary or useful for navigation or fishing. But in speaking of the banks of a public river being free for public use, a distinction must be drawn between that part which is covered by water at high tide, and the proper bank which is above the reach of the water. The former, as we have seen, is free for public use, subject only to grants from the crown which are not injurious to the rights of navigation or fishing; but to the latter, the crown or the public have no pretentions, inasmuch as it belongs to and is in fact part of the territory adjacent to the river, which is ordinarily vested in a private individual. But although the banks above high water mark pertain to the owners of the land bordering on the river, yet the use of them is open to the public in so far as they may be necessary for purposes of navigation or fishing, or can reasonably

(*k*) Ersk. 2. 1. 5; Bell's Prin. § 650. *Nicol* v. *Blaikie*, 1859, 22 D. 342.

(*l*) Campbell, 18 Nov. 1813, F. C.; Boucher, 30 Nov. 1814, F. C.; Prof. Bell (Prin. 643), throws some doubt on this conclusion.

be made subservient to the public uses of the river or sea, such as drawing in nets, or drying them, casting anchors, unloading goods, etc.; and in respect of this public right, no work or building can be erected either on the bed or the proper banks of the river, which can in any way impede the navigation (*m*). But it may be observed, that the use of the banks of the sea or rivers of Scotland are not common to all nations, but are public only to the subjects of the realm; stations in the rivers and sea remaining on the other hand, like the highways of the kingdom, the common privilege of all nations (*n*). If a more exact description be required of the space thus left common, it may be defined as extending as far as the ordinary tides run, which must be understood as the ordinary winter tides, and not as the extraordinary spring tides (*o*). A case occurred recently of some importance as illustrating the rights of fishermen to the use of the adjoining shore. No doubt exists as to the right of fishermen to the full use of the shore between high and low water mark, for any purpose connected with their occupation; but in the case referred to (*p*), the fishermen of Port Bannatyne, in the island of Bute, relying upon the Act 29 Geo. II. c. 23, asserted a right to the undisturbed use of certain lands belonging to Mr Hoyle of Kames, and adjoining the sea shore, for the purpose of drying their nets and beaching their boats. The Court, however, held that under the Act referred to, no permanent right to use waste and uncultivated lands for the purpose of the fishing trade can be acquired, but only a right to such pieces of ground as may from time to time happen to be waste and uncultivated. The rule is accordingly established, that all fishermen, not only those who approach from seaward, but those resident in the neighbourhood, are entitled to make use of waste lands adjoining the shore for the purposes of their occupation, so long as they do not interfere with the

(*m*) Ersk. 2. 1. 5. (*n*) Stair 2. 1. 5. (*o*) *Ibidem.*
(*p*) *Hoyle* v. *M'Cunn*, 10 Dec. 1858, 21. D. 96.

intentions of the proprietor in relation to enclosure or cultivation.

In relation to the question of the use of the land above high water mark in sea and public river fishing, the case of *Matthew* v. *Blair* (*q*), though referring more particularly to salmon fishing, may also be referred to. It was there held that those who are infeft in salmon fishing, are entitled not only to draw their nets to the nearest land, but to fix poles upon the land adjacent to the river where the sea ebbs and flows, and to dry and mend their nets upon them. The right to the use of banks in connection with rights of salmon fishing raises a variety of points, which will be hereafter referred to.

(*q*) M. 14264.

CHAPTER II.

REGULATION OF WHITE FISHING IN THE SEA—HERRING FISHING.

THE sea fisheries of Great Britain, and more especially the herring fisheries, have for centuries been the subject of voluminous and complicated legislation. To present a chronological history of these enactments, and to narrate the various changes which have taken place in this branch of the law, would be not only to swell this treatise to undue proportions, but would be altogether beyond its scope. The history of the British fisheries, however, is far from being one of uniform success. The encouragement they long received from the legislature did not ensure their prosperity. A system of bounties, which was persisted in long after its impolicy had been exposed by political economists, and its futility demonstrated by experience, instead of stimulating, had the effect of depressing an important branch of the national industry (*a*). Restrictions of all kinds were enacted

(*a*) A comprehensive sketch of past legislation relating to the herring fisheries is contained in Mr Mitchell's elaborate work upon 'The Herring.' Edinr. 1864. The old Scots Acts, which related to the subject, were very numerous, and were intended for the encouragement of the fisheries, but they imposed restrictions and regulations quite inconsistent with our notions of commercial policy. But in 1704 a more liberal enactment was made, showing that a more correct knowledge of what was expedient was beginning to be acquired. The frequent protective and restrictive Acts were caused by jealousy of the Dutch, who, by their greater enterprise, carried on the trade with greater prosperity. In 1727 a Board of Fisheries was appointed, who superintended the curing and packing of the fish; but they were unable to ensure success. In 1750 an Act was passed incorporating a Fishing Company, it being thought that by this means alone could sufficient capital be brought into play to work the fisheries with success; the Company, however,

and re-enacted up till the most recent period, and the times and methods of fishing were limited in an infinity of ways (*b*). A different policy, however, has now been adopted. The sea fisheries of Great Britain generally are now regulated by a recent statute (The Sea Fisheries' Act 1868). The primary object of this enactment is to give effect to a recent Fishery Convention (dated November 1867), between her Britannic Majesty and the Government of France, whereby the mutual rights of the fishermen of the two countries are fixed (*c*). The leading provisions of this convention secure to the

failed, in consequence, probably, of the erroneous laws and restrictions with which its establishment was accompanied. A more liberal Act, in 1756, extended the liberty of buying and selling fish. Among other encouragements to fishermen by the old Acts, large bounties, varying from 50s. to 20s. per ton, and 2s. per barrel, were given by Government to each buss that was fitted out, and the number of boats employed in the fisheries varied always, according to the rate of bounty that was offered. About 1779 the fishing nearly died out, owing partly to the erroneous restrictions, and partly to the high duties upon salt. A great change thus became a national question. In 1808 (48 Geo. III. c. 110, continued by 54 Geo. III, c. 102) a new commission was appointed, and new regulations were made, and these again were altered, and a new Board constituted in 1815 (55 Geo. III. c. 94). Bounties were established, and their amount and regulations concerning them fixed by the Acts 51 Geo. III. c. 101; 52 Geo. III. c. 153; 55 Geo. III. c. 94; 1 Geo. IV. c. 103; 5 Geo. IV. c. 64; 7 Geo. IV. c. 34; but they were gradually abolished, and the money applied to making piers and harbours, and other purposes connected with the fisheries.

(*b*) The Act 14 & 15 Vict. c. 26, prohibited the use of any but drift nets, especially trawl nets. The Acts 23 & 24 Vict. c. 92, § 14, and 28 & 29 Vict. c. 22, fixed a close time for herrings on the south-west coast of Scotland. Both of these statutes are repealed. Herrings seem to have been at one time considered as *inter regalia* (Stair, 2. 1. 5); and 'assize herrings' are spoken of as being due to the King (Balfour's Practicks, p. 82; Dallas' Styles, p. 27).

(*c*) This convention and relative statute repeals and supersedes the convention and statute of 1843. It is doubtful if the regulations of the earlier convention were ever rigidly observed. They did not give satisfaction to the fishermen of either country; and it is hoped that the more liberal character of the new convention will prove more effectual for the purpose required. With regard to the former Fishery Convention Act, the Sea Fishery Commission of 1863 reported that it was so framed that the highest legal authorities differed upon two very essential points: firstly, as to whether it did or did not possess force within the three miles limit: secondly, how far it applied merely to the seas geographically between England and France, and how far it had force in the other waters which surround the British islands. As a matter of fact, however, the jurisdiction of the Scotch Courts has frequently been admitted and exercised in regard to French Fishery boats transgressing the rules of the convention off the coasts of Scotland.

fishermen of either country the exclusive right of fishing within the distance of three miles from the coast of each kingdom respectively (*d*); enact that beyond these limits, fishing of all kinds may be carried on, by whatever means, and at all seasons, with the exception of a close season for oysters, applying to the British Channel only; and declare that in future the fishing-boats of either of the two countries shall be admitted to sell their fish in certain specified ports of the other country, on condition that they conform to the regulations mutually agreed upon. Besides giving effect to the Convention with France, the Sea Fisheries' Act of 1868, also makes a variety of regulations for the management of the Sea Fisheries of Britain generally, and for the preservation of order among the fishermen. The powers and duties of the fishery officers are laid down, regulations are made for the lighting, numbering, and registering of the fishing boats; penalties are enacted for the contravention of the statute, and the methods of enforcing the same are described (*e*).

With regard to herrings, all restrictions relating to the time and manner of fishing have been removed by the Act of 1867 (30 & 31 Vict. c. 52), and the rule laid down, that it shall be lawful to fish for and take herrings and herring-fry on all places on the coast of Scotland, and in any manner of way, and by means of any kind of net having meshes of the size required by law (*f*). The most important effect of this enactment is to legalize trawling, which was prohibited by former statutes (*g*). The sale or possession of herrings or

(*d*) A question of boundary arose (firstly, in regard to the Fern islands) as to whether the line was to be drawn three miles from the mainland, or three miles from British islands lying off the coast. The Judge Advocate-General decided that the line was to be drawn three miles outside the islands.

(*e*) The statute and convention are printed in the Appendix.

(*f*) By art. 10 of the convention, incorporated in the Sea Fisheries' Act of 1868, all restrictions whatever are abolished outside the three mile limit. The regulation regarding the size of the meshes would seem, therefore, only to have force within that limit.

(*g*) 14 & 15 Vict. c. 26, § 6.

herring-fry so taken, is also legalized (*h*). The law requires that the meshes of the net should measure not less than one inch from knot to knot, and the use of a double bottom or pouch, and the placing of one net behind another, so as practically to diminish the size of the mesh is prohibited (*i*).

The time and manner in which the herring fishery may be carried on being thus unlimited, there remains other matters of importance connected with the trade, of which the law takes cognizance. The management of the fisheries is intrusted to the Board of British White Herring Fisheries, established in 1809, under the provisions of the Acts 48 Geo. III. c. 110; 55 Geo. III. c. 94; 10 & 11 Vict. c 91; and 23 & 24 Vict. c. 92 (*j*). The Board, whose head-quarters

(*h*) 30 & 31 Vict. c. 52, § 1.

(*i*) 48 Geo. III. c. 110, § 12. The penalty for contravening this regulation is now fixed at not less than £5, or more than £20, together with the forfeiture of the net. 30 & 31 Vict. c. 52, § 1.

(*j*) The necessity for the existence of the Board, and the policy of its regulations, have been the subject of much controversy since 1848, but into the details, or the merits of this question, there is no intention of entering. The Commissioners of 1867 report, that they have 'carefully examined into the system of branding 'carried on by the Scotch Fishery Board,' and arrived at very definite convictions, which cannot, they say, be better expressed than in the words of the minute made by the Lords of the Treasury ten years ago:—'We are of opinion that the 'time has now arrived when the fishing trade may be entirely thrown open, and 'the artificial system created by the brand of the Fishery Board may be abolished, 'substituting for it the sounder system already adopted, with regard to all other 'articles of trade. With this will cease all necessity for an establishment, because 'we do not consider that it falls within the functions of such a department to keep 'order, on shore or afloat, among the fishermen, or to enforce the observance of 'conventions between this country and foreign powers.' Sir John Shaw Lefevre, on the other hand, who carefully examined the subject as Commissioner for the Government in 1848, reported in favour of its continuance. He seems to have been fully alive to the importance of those principles of political economy which are opposed to the system; and entering upon the inquiry certainly with no bias in its favour, was convinced that the system was useful, necessary, and tended to promote the success of the fishery. His report is of the greatest value in the consideration of the question. Mr Mitchell also, an excellent authority, says—'The whole system 'carefully and economically managed by the Board and its officials and local 'officers, combined with judicious legislation and arrangement, has insured that 'efficiency and success which entitles it to be characterized as much superior to 'any similar existing institution either at home or abroad. In truth, the herring 'fishery has become prosperous in spite of every obstacle thrown in its way by the 'erroneous government exactions and prohibitions, and its progress under so

are in Edinburgh, consist of thirteen gentlemen, who are appointed by letters patent by the Queen, and whose duties are discharged without salary. The functions of the Board are manifold, and may be enumerated under seven heads.

1. Those which relate to the branding of herrings (*k*).

' many difficulties is much owing to the judicious regulations and superintendence ' of the Fishery Board, and its officers.' The Commissioners of 1856 were divided in opinion: Mr Bonamy Price and Mr St John were in favour of continuing the Board, while Admiral Sullivan was opposed to it. It may be remarked, that the principle of a government mark, guaranteeing the quality of articles of commerce, though generally abandoned, is still recognized in regard to gold and silver plate, which receives the stamp of the Assay office. It is probable, too, that the Board may be farther utilized for the performance of new and important duties under the Sea Fisheries' Act of 1868.

(*k*) The quality of the cure must be inspected before the brand is adhibited. ' There ought to be 235 lb. of herrings, washed free of salt and pickles, if intended ' for home consumption, in each cask; 224 lb. if intended for the European markets, ' and 212 lb. for places out of Europe. Before any cask of herrings can be branded ' with the crown brand, they must lie ten free days in the cask; the day of their ' having been packed and barrelled, and the day they are presented for the brand, ' not being counted. On this matter the Board are authorised to make regulations, ' 14 & 15 Vict. c. 26, § 2. Herrings for places out of Europe, or for the West ' Indies, must be repacked; they must not be packed with the original pickle and ' salt, but must be washed and then repacked with fresh pickle and salt. The ' *appendices cæci.* or crown-gut, although always recommended by the officers to ' be allowed to remain for the home and European markets, is taken off if intended ' for the West Indies or places out of Europe. If the herrings are assorted, namely, ' the *full* herrings (herrings full of melt and roe) separated from *matjes* (herrings ' with the melt and roe of a small size), and those separated from *ylen* (empty or ' shotten herrings), the fishery officer has authority to apply a brand, with the word ' "full," to the first, and the word "maties," to the second description, in addition ' to the crown brand. The fishery officer does not insist upon any particular ' quantity or quality of salt being used, but he is entitled to see that there is a ' sufficient quantity applied for the preservation of the fish.' Besides the regular crown brand for properly cured herrings, and the two additional brands above mentioned, there is a diamond-shaped brand for surplus herrings repacked for the West Indies or places out of Europe, having the letters PP, and there is a brand in the form of a star, which is applied along with the crown brand, when the latter has been put on contrary to the opinion of the officer, but allowed because decided in favour of the curer by arbiters mutually chosen. The government charge for branding is 4d. per barrel (21 & 22 Vict. c. 69), and is paid to the Consolidated Fund. The sum received from these fees is considerably greater than the expense connected with the system. All cured herrings are inspected by the officers of the Board, whether application be made for the brand or not. The quality of the cure is only inspected when the brand is applied for, but in all cases the size of the barrel in which they are contained must receive the government sanction. The statutory regulations regarding the packing, etc., of herrings for exportation

2. The prevention of illegal nets, and of illegal or improper fishing (*l*).

4. A general superintendence over the persons engaged in fishing and curing; maintaining order at the fishing grounds (*m*); enforcing the regulations for naming and numbering the boats (*n*); protecting the sprat fishermen in their

and otherwise, will be found in 48 Geo. III. c. 110; §§ 36–42; 55 Geo. III. c. 94, §§ 23-30, and 14 & 15 Vict. c. 26, §§ 4. 5. The offence of fraudulently branding full or empty barrels is, by 48 Geo. III. c. 110, § 50, and 14 & 15 Vict. c. 26, § 3, punishable by a fine not exceeding £50, or imprisonment for a period not exceeding six months.

The Board formerly had jurisdiction over the punching and branding of dried cod, ling, tusk, and hake, under the Act of 1820, 1 Geo. IV. c. 103, which conferred bounties for these species of fish.

(*l*) Previous to the recent Act of 1867, the duties of the Board officers under this head were numerous and various, including the prevention of trawling and the enforcement of close time. There are, however, now no restrictions with regard to the time or manner of fishing for herrings. The Board have still to see that no nets with meshes of less than the legal size are used within the three mile limit. The infliction of the penalty may be evaded, if it is clearly proved that the net having meshes of less than one inch from knot to knot, is not used for the purpose of catching herring: *Purdie*, Sheriff-court of Dumbarton, Nov. 1863.

(*m*) The preservation of order among the fishermen is sometimes, in narrow waters, a very onerous duty. On the west coast a shore police are kept for the purpose, and there is a cutter belonging to the Board, which can cruise on either coast; there are, besides, usually two steamers lent by the Admiralty to the Board for that purpose. The powers and duties of the Board with regard to the preservation of order were formerly defined by 23 & 24 Vict. c. 92, § 5. That enactment is repealed, and they are now regulated by 30 & 31 Vict. c. 52, § 2. The Commissioners are authorized to make such regulations as they shall think fit for preventing the fishermen destroying, injuring, or carrying off each others nets, or fish, floats, buoys, or other implements; a breach of the regulations subjects the offender to a penalty of not less than £5, and not more than £20, and the boat and gear of the offender may be seized by the fishery officers, and detained for a period not exceeding thirty days, or they may be forfeited. The regulations may be rescinded or altered from time to time, § 3. Before taking effect, they must be approved by the Commissioners of the Treasury, and published in the manner directed by § 4. They must also be laid before Parliament. The offence of resisting the fishery officers, or the persons employed by the naval superintendent, in the execution of their duty, is punishable by a fine not exceeding £50, or in default of payment imprisonment for a period not exceeding 60 days. §§ 5, 6.

(*n*) The Act of 1860, §§ 11 and 12, declares, *inter alia*, that 'all boats, sails, buoys, 'and other implements of fishing belonging to small boats, shall be marked under 'such regulations as the Comissioners may issue, and if not so marked, shall be 'liable to seizure, and may be detained for a period not exceeding one month; and 'all boats shall have the name of the owner, and the port or place to which she be-'longs, painted in white or yellow Roman letters of two inches in length, on a black

right of boundary (*o*); receiving and restoring lost fishery property (*p*); supplying clearances to fishery vessels fishing and curing at sea (*q*); and enforcing the provisions of Fishery Convention with France (*r*).

5. The administration of the grants for the repair of fishermen's boats, and for building fishery piers and harbours (*s*).

6. Furnishing returns and statistics connected with the fisheries (*t*).

ground, and may be seized and detained for one month if such are awanting. 24 & 25 Vict. c. 72, § 3, provides a penalty for defacing, altering, or concealing the marks. The Sea Fisheries' Act 1868 (§§ 20–26), requires fishing boats to carry a light at night; and makes regulations regarding the registration, etc., of boats.

(*o*) In sprat fishing, a net is used having smaller meshes than is permitted in the herring fishery; sprat fishing, accordingly, could not be carried on along with the herring fishing. The Act of 1860 was passed for the protection of the sprat fishermen, allowing it to be carried on in the Forth, to the westward of a line drawn from the west pier at South Queensferry harbour through Bimar beacon to the north coast, 24 & 25 Vict. c. 72, § 5. An opinion prevails that the boundary should be abolished, but at the same time strict police regulations enforced for preventing the two kinds of nets coming into contact.

(*p*) Nets, etc., are frequently lost in consequence of bad weather, or excessive weight of fish. The property, frequently recovered by the cutter, is delivered to the fishery officer of the district, and restored to the owners; or sold, if not claimed, 23 & 24 Vict. c. 92, § 10.

(*q*) 48 Geo. III. c. 110, §§ 31–36; 55 Geo. III. c. 94, §§ 14, 16.

(*r*) The French fishing boats which frequent the coast often attempt to come within the boundary prescribed by the Convention and Act. The Admiralty cruisers on the station receive instructions from the Fishery Board, and any complaints which the fishermen may have to make are received and dealt with by the Board. The Board of Trade is appointed to carry out the Act; the Fishery Board acts in its aid, and is in communication also with the Admiralty.

(*s*) There is an annual grant of £3000 from government for this purpose, to be applied to Scotland only. The Board is guided in the allotment of its expenditure by the importance of the locality as a fishing station, and the public advantage that is likely to result from the work. No grant is made unless a quarter of the cost of the work is contributed by those interested. Regulations have been issued by the Board for administering the grants. Large operations of this nature have been carried on at Wick, under the auspices of the British Fishing Society, originally incorporated in 1786, and reincorporated by the Pultney Harbour Act, 1857. The Society acquired extensive property at Pultneytown, and founded a settlement, at which they erected a harbour for the accommodation of vessels engaged in the herring fishery. Their works have been enlarged from time to time, and a breakwater of large dimensions is at present in course of construction.

(*t*) The functions of the Board extends, with regard to the collection of statis-

6. The enforcement of the law with respect to the size and material of barrels and measures (*u*).

The fishery officers, besides the establishment of the Board, consist of a naval superintendent, and officers appointed by the treasury (*v*), and superintendents of fisheries appointed by the Board (*x*). The former only are authorised to superintend the curing of herrings and the branding of the barrels. Officers are not liable to action for acts done in execution of their statutory duties, except they be done maliciously (*y*). The mode of enforcing fines, forfeitures, and penalties, under the Acts, is laid down by 23 & 24 Vict. c. 92, §§ 14–22, and

tics (but to that effect only), to the Isle of Man. The Board also collects statistics of cured cod and ling. All curers are bound to make a return of the quantity of fish cured, whether branded or not, under a penalty, in case of failure, of £5, and refusal of the brand. No returns are made of the fresh fish that are caught. To give some idea of the extent of the Scotch herring fishery, it may be mentioned that there are 10,000 boats employed.

(*u*) The legal measure for the sale of fresh herrings is a cran, which must contain thirty-seven and a half gallons imperial standard measure, and is stamped with the government brand. The Board have regulated the size and construction of the cran, by an order dated 15 May 1852. No other measure may be used, except, in certain circumstances, a quarter cran measure, 14 & 15 Vict. c. 26, § 7. The only legal measure for cured herrings is the barrel, stamped with the government brand, which must contain not less than thirty-two gallons old wine measure, or twenty-seven imperial gallons. Half barrels may be used, if of legal size. The cask may be of any kind of wood, except fir; but it must be an inch and a half thick throughout. It is not allowed to cure herrings except in the standard barrel, whether the herrings be branded or not. The Commissioners of 1856 were satisfied that the Board alone could maintain these measures, and that the duty could not be transferred to any other department. They were of opinion that the inspector of weights and measures could not do the work, owing to the immense number of barrels employed in the fisheries. They came to the conclusion, that if the functions of the Board were abolished, the barrels would cease to have any standard of measure. The use or possession of a cran or measure of undue content, whether branded or not, is an offence punishable by a penalty of £10. The fraudulent branding of empty barrels is punishable in the same manner as the fraudulent branding of barrels full of herrings, 14 & 15 Vict. c. 26, § 3.

(*v*) 48 Geo. III. c. 110, §§ 8–12. The shore officers are twenty-eight in number, and must be coopers by trade. The acceptance by any fishery officer of any fee beyond his salary, subjects him to a penalty of £100, and dismissal, § 54.

(*x*) 23 & 24 Vict. c. 92, § 3. Constables, or police officers, may, on the requisition of the Commissioners, exercise the functions of the superintendent or other fishery officer, with the exception of those relating to the curing and branding of herrings, 24 & 25 Vict. c. 72, § 7.

(*y*) 48 Geo. III. c. 110, § 59.

14 & 15 Vict. c. 26, § 9. The procedure is of a summary character, and the prosecutions take place at the instance of the fishery officers or the procurator-fiscal, before the sheriff or two justices. Offences committed off the coast are held to have been committed within the county, or either of the counties adjacent; and the jurisdiction of the sheriff extends, as regards these acts, to a distance of ten miles from the coast (*z*).

The jurisdiction of the Board extends, under the Acts of Parliament, to the whole of Great Britain, but is practically limited to Scotland and part of the coast of Northumberland, as it is in those parts alone that the fishery is carried on according to the system of the white herring cure. The herring fishery alone is under the superintendence of the Board; but by the Act of 1860 (§§ 5, 6) they have power to interfere with other fishings for the protection of the herring fishery. Beam trawling for cod, soles, etc., or any other kind of net fishing which the Commissioners might think injurious to the herring fishery, was thereby subjected to their regulations. The jurisdiction of the Board with regard to making bye-laws of this nature, does not extend beyond Scotland, and they have no power to interfere with line fishing.

Besides the ordinary method of catching herrings by the drift net, they are sometimes fished by means of seining, by cruives or wicker baskets sunk in the tideway, and by yairs or enclosures on the coast, to none of which methods is there any legal objection. Herring yairs, however, must not be converted into stake nets, or used for the purpose of catching salmon (*a*). Herring nets must not be used at or near the mouth of a river, so as unduly to interfere with the entrance of salmon into the river.

(*z*) 48 Geo. III. c. 110, § 60.

Full details regarding the powers and duties of the Board are given in the evidence of Mr Primrose, the Secretary of the Board, before the Commission of 1860.

(*a*) *Mag. of Dumbarton* v. *Graham*, 16 Jan. 1813, F. C. p. 59.

CHAPTER III.

ROYAL FISH—WHALE FISHING.

HAVING considered the nature of the right of the public to fish in the open and territorial sea and in navigable rivers, and the limitations to which the right is subject in respect of the place and manner of its exercise, we come to consider its limitations in respect of the species of fish which may be captured.

Royal Fish.—Fish, like other animals *ferœ naturæ*, become the property of the captor; and the sole exception to this rule is the limited class known as royal fish, which belong to the sovereign *jure coronæ*. Among them, whales are the chief; and even in the case of these animals, and other royal fish, the royal right is limited in two ways, (1) to whales captured within the territorial seas (*a*), and (2) to whales of a large size (*b*). By the *Leges Forestarum*, § 17, all great whales belong to the king, 'and also such smaller whales as 'may not be drawn from the water to the nearest part of the 'land on a wain with six oxen;' but Erskine (2.1.10) says, 'that 'for a long time past, no whales have been claimed either by 'the king or his donatory, but such as were of a considerably 'larger size.' There seems to be some doubt whether, with regard to the whale and sturgeon, the crown is entitled to the whole body of the animal: it has been said that the head belongs to the king, the tail to the queen, and the body to

(*a*) Hale *de Jure Maris*, p. 43. (*b*) Stair. 2 1. 5. and 33. Ersk. 2. 1. 10.

the captor (*c*). Among other royal fish may be reckoned the sturgeon, and perhaps the grampus, the porpoise, and the dolphin (*d*), but it is sometimes supposed that these can only be claimed by the king when run aground on the shore, and not when captured off the coast (*e*). Whales of a smaller size than those above mentioned belong to the captor, whether taken in *plein mer* or run aground on the beach; but in the Shetland isles, the usage is, that such whales belong half to the proprietor of the shore on which they are driven, and half to the captors (*f*). The *ipsa corpora* of the royal fish which have been enumerated belong to the crown, and not the abstract right of taking them, which is a public privilege. The salmon, however, is in a different position. The *ipsum corpus* of the salmon does not belong to the crown, either when it is alive in the water, or when it is captured, unless the crown or a servant of the crown, be the actual captor. It is the abstract right of fishing for the salmon which belongs to the crown, or 'the right to the salmon fishings in Scotland,' which, as the Lord Chancellor has remarked in the House of Lords, 'appears to be a common and well understood description of 'the subject of claim.' The salmon itself, like other animals *ferœ naturœ*, becomes the property of the captor, even though he be one who has no right to the fishing (*g*). There may be statutory regulations empowering the officers of the law to make seizure of the fish, but this in no way annuls the rule

(*c*) Hale, p. 43.

(*d*) Hale (p. 43) mentions only the sturgeon, porpoise, and whale, and grampise; also 'great fish that come under no known denomination.'

(*e*) Ersk. 2. 1, 10; Hale *de Jure Maris*, p. 18. Herrings are accounted by Stair (2. 1. 5) as *inter regalia;* but whether he considered them as royal fish, or the right of taking them merely as royal, the rule is perfectly obsolete. In Balfour's Practicks, p. 82, 'assize herrings' are spoken of as being due to the king. See also Dallas' Styles, 127.

(*f*) *Stove* v. *Colvin*, 1831, 9 S. 633.

(*g*) By 24 & 25 Vict. c. 96, § 24, it is larceny to take fish from a private pond; and in that case, of course, the stolen goods do not become the property of the captor. The statute does not extend to Scotland, where such an act is theft by common law. *Vide postea.*

of common law (*h*). It is not a larceny or a felony to take fish from the water before they have become the property of an individual by capture; it is a trespass merely on the right of property. As regards royal fish, however, they become, as soon as captured, whosoever the captor, the property of the sovereign, and the crown has a right to recover the specific fish.

The crown's right to royal fish may be acquired by a subject, either by grant or by prescription (*i*). It does not appear what kind of title will be considered effectual as a foundation for prescription; but possibly a general grant '*cum piscationibus*,' or a grant of the foreshore, followed by immemorial usage of appropriating the royal fish stranded thereon, would suffice. It has been decided, but apparently with some hesitation, that whales do not fall under a gift of wreck (*k*).

Regulation of Whale Fishing.—The same general principles regulate the practice of whale fishing as apply to the capture of other animals *feræ naturæ;* but the peculiarities of the pursuit have created the necessity for special rules. *Quod ante nullius est id naturali ratione occupanti conceditur.* The first seizure creates the right of property, and not the first pursuit and attempt to capture. But, in order to vest the property, it is not necessary that the capture be actually complete; it is sufficient if the fish be mortally wounded, and secure of ultimate capture; 'as at the whale fishing at Greenland, he that 'woundeth a whale, so that she cannot keep the sea for the 'smart of her wound, and so must needs come to land, is pro-'prietor, and not he that lays first hand on her at land (*l*).' The general rule also goes farther, that where a person is in

(*h*) *Scott* v. *Everitt*, 18 Jan. 1853, 15 D. 288; Gregory, 1752, M. 4989.

(*i*) Hale *de Jure Maris*, p. 43.

(*k*) *Sir John Hume* v. *The Admiral Depute*, 1739, *Elchies' Decisions* v. *Regalia*, No. 2.

(*l*) Stair, 2. 1. 33.

pursuit of an animal, and has a fair prospect of securing it, and another person joins the pursuit and captures the animal, it becomes the property not of the actual occupant, but of the first who pursued it (*m*). Special rules have been introduced to meet the exigencies and peculiarities of whale fishing. These rules being for the most part founded upon the custom of the particular locality, and overriding, in some particulars, the Scotch law of occupancy, must, in order to be binding, be clearly understood by the parties interested—and in that case they are obligatory not only as between British subjects, but as between them and all other nations (*n*). Where a custom contrary to the ordinary usage prevails, that also, if generally recognised and adopted, will regulate the law in that locality (*o*); but though it will bind those who assent to it, it cannot deprive a party who has not assented to it of the benefit of the old regulations which it overrides (*p*).

By a rule which is known as the rule of 'fast and loose,' the person who first harpoons a fish and retains his hold of it until it is finally captured,—the harpoon remaining in the fish, and the line remaining attached to the boat (*q*)—is the

(*m*) It will be seen *infra* that this rule, which is in accordance with the Scotch law of occupancy, does not apply where a contrary custom prevails in the locality, *Aberdeen Arctic Co.* v. *Sutter*, 1862, 4 Macq. 355.

(*n*) It has been decided by the House of Lords, reversing the decision of the Court of Session, that the general custom of the Greenland and Davis Straits whale fisheries is applicable to Cumberland Inlet. *Aberdeen Arctic Co.* v. *Sutter*, *ut supra*; *Fennings* v. *Grenville*, 1808; 1 Taunton, 241.

(*o*) 'The importance of having a settled rule, and of adhering to it in all cases, 'where it can properly be applied, is obvious. It governs the rights, not of whalers 'from one country only, but of rival nations, upon fishing ground common to them 'all; and it prevents the violent collisions and contests which would inevitably arise 'out of conflicting claims to the possession of the same object of pursuit.'—*Aberdeen Arctic Co.* v. *Sutter*, *ut supra*, *per* Lord Chelmsford; *Fennings* v. *Grenville*, *supra*, *per* Chambre, J.

(*p*) *Fennings* v. *Grenville*, *ut supra*.

(*q*) But if the boat be deserted by the crew, the fish, though remaining fast to the boat, is considered 'loose.' In such case not only the harpoon and line, but also the boat, has been claimed by the after captor as an accessory of the whale.

A fish is 'loose' though it has harpoons and lines attached to it, if the end of the line, instead of being attached to the boat, is floated by means of 'drogs,' or

proprietor of the fish, although the actual capture and killing be accomplished by other persons or by means of their assistance (*r*); and this is also the rule where the harpoon has come out of the fish, but the fish is so entangled in the line as practically to continue in the power and management of the striker (*s*). But if the harpoon and line become detached, the whale becomes a 'loose' fish, and becomes the property of any one who captures it (*t*); and the rule holds good, even though the fish when captured is in a dying condition from the wound originally inflicted (*u*). 'Nay, to 'such an extent has the rule been carried, that supposing a 'whale, or any number of whales, to be killed, and the captors 'of those whales are driven by stress of weather to abandon 'them, and to moor them to the ice, or even to the land, if 'another ship, which has had no part in the capture, comes up 'and finds the whales in that position, that other ship's party 'may take possession of them, and appropriate them as the 'captors' (*x*).

If a whale is struck by a second harpoon belonging to another ship, while the fish remains fast to the first striker and in his power and management, the second harpoon is considered as a friendly harpoon, and the fish is the property of the first striker; and this will hold good though the fish,

inflated skins. At least a fish cannot be considered 'fast' if this expedient of fastening 'drogs' to the end of the line is merely adopted when it is necessary to cut the line away. *Aberdeen Arctic Co.* v. *Sutter*, *supra*. But if 'drogging, which is the Esquimaux method of seal fishing, is adopted as a regular method of whale fishing, it might become, by usage and general consent, the established custom (as it is among the Esquimaux) to consider a whale that has harpoons and drogs attached to it as a 'fast' fish. The custom among the Gallipagos islands is to consider a fish struck by a loose harpoon or drog as the joint property of the striker, and the actual captor; each gets half of the fish; *Fennings* v. *Grenville*, *ut supra*.

(*r*) *Addison* v. *Row*, 1794; 3 Paton's App. 334; *Hutchison* v. *Dundee Whale Fishing Co.*, 1830; 5 Murray 162.

(*s*) *Hogarth* v. *Jackson*, 1827; 1 Mood. and Malk. 58.

(*t*) Bell's Prin. § 1289; *Aberdeen Arctic Co.* v. *Sutter*, *ut supra*. *Addison* v. *Row*, *ut supra*.

(*u*) *Ibid.* (*x*) Per Lord Chancellor, *ibid.*

after it is struck by the second harpoon, breaks away from the first harpoon, and is captured by the second; but if the fish has broken away from the first harpoon, and is subsequently struck and captured by the second, it then becomes the property of the second (*y*); unless the breaking away of the fish from the first striker is caused by the conduct of the second, who, after causing the fish to break way, captures it; in such a case the first striker does not lose his right to the fish (*z*). A special rule has been introduced in the Gallipagos islands, where the custom of 'drog' fishing seems to prevail. A fish struck by one party with a loose harpoon or drog, and ultimately captured by a second, is divided equally between the striker and the captor (*a*). This rule seems not to prevail in the Greenland fisheries.

The Act 42 Geo. III. c. 41, and various others of earlier date, were passed for the encouragement of the whale fisheries, and for the regulation of the ships; but since the practice of giving bounties has been discontinued, these Acts have been repealed, or fallen into disuse.

(*y*) *Littledaile* v. *Scaith*, etc., 1788; 1 Taunton 243, note.
(*z*) *Skinner* v. *Chapman*, 1827; 1 Mood and Malk. 59, note.
(*a*) *Fennings* v. *Grenville*, 1808, *ut supra*.

CHAPTER IV.

OYSTERS, MUSSELS, ETC.

THE right of taking oysters and mussels round the coasts of Scotland is *inter regalia*. That these subjects, which, in many instances are of considerable value (*a*), are in some sense the property of the crown, has never been questioned; but it has been considered a matter of doubt whether the royal interest is one of patrimonial property, or is merely that of a trustee for the uses of the public. It may now, however, be considered as fixed, that the right forms part of the *patrimonium principis*, or hereditary revenues of the crown, and that they are not held by the sovereign merely in his character as trustee for the public; in other words, that the right to them is personal to the sovereign, and the rents or produce of them applicable to his own behoof, in the same manner as the salmon fishings of the kingdom are held to be; and that they are not merely held by him for the benefit and enjoyment of the lieges in the same manner as the other public rights of the people (*b*).

(*a*) A distinction has been drawn in argument between oysters and mussels, the latter being used chiefly for bait, and as an accessory of the public right of white fishing. The argument, as a ground for drawing a distinction between the rights of property in the two subjects, has been justly repudiated, and the law may be taken as the same in both cases.

(*b*) *Duchess of Sutherland* v. *Watson*, etc., 10 Jan. 1868, 6 Macph. 199. The term *regalia*, as used in Scotch law, includes all the *res publicæ* of the Roman law, subjects which are now, since the introduction of the feudal law, held to be vested in the sovereign in his character of trustee for the public, *ut qui patris patræ et populi tutoris personam sustinet.* These latter are held by the crown as *jura publica;* others, including the right of oyster and mussel fishing, are *jura privata.* The *jus*

Whatever the law may have been regarding the right of property in white fishing in the sea, previous to the enactment of Geo. II., already referred to, and whether the same freedom of fishing to the whole nation existed by the common law prior to that statute as after it, it is tolerably certain that such freedom never extended to oyster and mussel fishing, and was confined only to floating fish, which could be caught by means of sailing in boats, and without the necessity of going upon the land. The right of taking, or fishing for, oysters and mussels, being the patrimonial property of the crown, has never been thrown open to the public by statutory enactment in the same manner as the right of white fishing; it has, on the contrary, as will be seen hereafter, been fenced round by statutory prohibitions and regulations.

Oysters and mussels are essentially different in their nature from other kinds of fish. They are physically connected with the soil on which they rest; they are practically unendowed with the power of locomotion (*c*), and they are

privatum which the king has in certain of the *regalia*, is subject to certain indefeasible rights of the public, such as navigation, passage, etc., and any alienation to an individual of the *jus privatum* implies a reservation of these *jura publica*. Those *regalia*, in which the crown's right is merely of the nature of a *jus publicum* are, as a rule, inalienable; but in certain special cases there may be a conveyance of them to an individual, for example, of ports and ferries; but to conveyances of these to a subject are annexed conditions to secure their free use and enjoyment by all the lieges, the only method of making them available to the public being to convey them to an individual or a corporation in trust, as it were, for the public. The *jura privata* of the sovereign are sometimes classed as *regalia minora*, the others being *regalia majora*. Ersk. (ii. 1. 6) speaks of all *res publicæ* as *regalia*, but without distinguishing between those which the crown holds for the benefit of the public, and those which the crown holds for itself, and with which the lieges are not entitled to interfere.

(*c*) In this respect they differ from other crustaceæ and molluscs. Lobsters, whelks, limpets, and similar shell fish, are, to some extent at least, capable of locomotion. *Edin. Encyclopædia* (Crustaceology), p. 399. *Statistical Account of Scotland*, vol. viii. p. 48. Other kinds of fish besides the crustaceæ and molluscs, may be said to have a fixed local habitation, such as herrings, cod, etc., which are usually found in one locality; but this is not an invariable rule, and is not a distinguishing characteristic of the fish.

found usually congregated in vast numbers on the rocks, or on extensive banks of sand or mud, which are called scalps, extending frequently to hundreds of acres. The mussel scalps are usually situated upon the foreshore, between high and low water mark, though in many cases they are partially submerged even at low water, while in others the whole extent may be never uncovered at all. The mussels, when left bare by the tide, are usually gathered by the hand; while those under water are taken by means of dredging. Oysters, being more generally found in deep water, and at a considerable distance from the shore, are captured by means of dredging. Oyster beds and mussel scalps being thus by their nature peculiarly susceptible of appropriation, it has been decided that they are a proper heritable or feudal estate, and that being so, they are vested in the crown according to the feudal principle; and further, that the right which is thus vested in the crown is not a *jus publicum*, but forms part of the patrimonial estate of the sovereign. According to the decisions upon which this statement of the law rests, the crown's right can probably not be extended, geographically, beyond the foreshore, or at any rate beyond that portion of the bed of the sea which lies within the three mile limit; nor can it probably be held to include the exclusive right of taking such oysters and mussels as are isolated from the beds or scalps, and are found scattered singly or in small numbers over the whole extent of the sea coast. Oysters and mussels are not themselves royal fish, but the crown's estate consists merely in the right to catch and use them (*d*).

The right of the crown extends to scalps over the whole coasts and bays and public rivers of Scotland, but is bounded seaward by the three mile limit (*e*). With regard to the question whether it extends to mussel scalps in private

(*d*) *Vide* note (*q*) p. 54 *infra*, and note (*d*) p. 63 *infra*.

(*e*) There are oyster beds on the Dogger Bank, and other localities *in alto mari* at a considerable distance from the shore. These must be considered *publici juris*.

rivers, the only authority which exists is a dictum in the negative (*f*).

Oyster beds and mussel scalps being thus *in patrimonio principis*, may be made the subject of exclusive grant or temporary lease to an individual. Many cases have occurred in which such grants have been sustained (*g*), and it has not been held that they implied any obligation in the grantee to keep up the subject or to supply the public with the produce

(*f*) *Grant* v. *Rose*, 1764, M. 12801. The *alveus* of private rivers being the property of the adjacent landholder, the oysters or mussels adhering thereto, are so also. If the authority of the above case were acknowledged at the present day, it would fortify the doctrine that oysters and mussels are *in patrimonio principis*, simply because the foreshore or bed of the sea, to which they are attached, is so.

(*g*) *Grant* v. *Rose*, 1764. In the report of this case (M. 12801), while stating that mussel scalps may be granted by the crown to individuals, it is said that in the absence of grant, 'mussel scalps in a river belong, like white fish, to the public; 'but that expediency, supported by practice, had introduced a prerogative of 'making such grants.' This phrase may have been used by the judges, or may possibly have been introduced by the reporter; at all events, the theory which it expresses of the nature of the crown's right, has now been overruled. *Duke of Portland* v. *Gray*, 1832, *per* Lord Corehouse, 11 Shaw, p. 16; Wight's Election Law, p. 199; Bell's Election Law, p. 51; Bell's Prin. 646. *Maitland* v. *M'Clelland*, 1860, 23 D. 216. In this case an exclusive grant of oyster fishing was sustained, though the character of the crown's right was left undecided. A passage from *Balfour's Practicks* (c. 56, 57, p. 626) has been often quoted in favour of a public right to mussels, but it can scarcely be construed to mean more than that in the absence of a grant to an individual, the right may be exercised by the public; *vide* Skene de Verb. Sig. voce Ware, and Lord Medwyn's opinion in *Paterson* v. *Lord Ailsa*, 1846, 8 D. 752. Balfour's *dictum* has been frequently repudiated; but it may have referred only to scattered mussels and not to scalps, in which case there is no grounds for disputing it. The case of *Hall* v. *Whillis*, 1852, 14 D. 324, has also been quoted for the same purposes, but it will be observed that the question did not relate to mussels, but to limpets and other small shell fish, and that Sir John Hall had neither express grant nor exclusive possession of such fishings. The distinction is pointed out by Lord Cockburn. See also *Ramsay* v. *Kellies*, 1776, 5 Br. Supp. 445; Hailes, 722; *Grant* v. *Rose*, 1764, M. 12801; *Erskine* v. *Magistrates of Montrose*, 1819, Hume, 558; *Agnew* v. *Magistrates of Stranraer*, 1822, 2 S. 42.

It has not, in modern times, been the policy of the crown to grant exclusive rights to individuals in subjects which have been enjoyed by the public; but now that the patrimonial character of the crown's right to oyster and mussel scalps has been established, the property may be made use of for purposes of revenue. The appropriation will, undoubtedly, tell to the benefit of the public; the scalps will be taken out of the hands of a careless and improvident community, whose ignorance and folly was, in many instances, ruining these valuable sources of national wealth, and they will be intrusted for propagation and protection to an individual who has an interest to manage them with the skill and discretion which they require, and who can furnish the fishermen with an unlimited supply of bait at a trifling cost. The leases

of the scalps (*h*). The right which is thus granted is neither held nor granted by virtue of the prerogative; it is not of the nature of a monopoly or exclusive privilege, but is a heritable estate held by a feudal title. It can only be held by a subject under a specific grant from the crown, or what is equivalent to a specfic grant. The right of oyster or mussel fishing being a separate estate, the crown may make a grant to a subject, of lands adjacent to the shore, reserving to itself the right to oyster or mussel scalps, or the crown may make a grant to a subject of the right of oyster and mussel fishing, although the granter have no property in the adjacent lands.

A grant of oyster or mussel scalps to an individual does not carry along with it an exclusive right to the ordinary uses of the shore or *solum* on which it is situated, and the use by the grantee must not interfere with those primary and indefeasible rights, such as navigation, passage, etc., which the public are entitled to exercise on the sea, the sea shore, and on public rivers and their banks (*i*). A private right of property in oyster or mussel beds, does not exclude the public right of fishing for white floating fish in the same locality (*k*).

which have already been granted by the crown, contain an obligation on the lessee to supply fishermen with bait at the lowest market rate. The Report of the Sea Fishery Commission of 1863 contains various recommendations for the encouragement of oyster culture.

(*h*) When certain subjects are granted from the crown to an individual, an obligation is implied in the grantee to maintain the subject for the convenience and accommodation of the public, and the right may be said, in some sense, to be granted as a trust. Such are ports, ferries, etc., but the royal right to these subjects is merely a *jus publicum*, the right being vested in the sovereign as guardian of the interests of the lieges; and the right which is conveyed to an individual is, accordingly, of no higher nature. In such cases, the appropriation to an individual is for the beneficial administration for the public. *Dundee Harbour Trustees* v. *Dougall*, 1848, 11 D. 6. The right of levying dues, which the grant implies, is in order to *keep up*, and repair the subject for the uses of the public, and thus carry out the trust which is vested in the crown. See also *Stirling* v. *Stein*, 1814, Hume, 557.

(*i*) *Commissioners of Woods* v. *Gammel*, 1851, 13 D. 855, Lord Medwyn's opinion.

(*k*) 3 & 4 Vict. c. 74, § 3. But in private fisheries, established under 29 & 30 Vict. c. 85, or under the subsequent Sea Fisheries' Act of 1868, the public right of fishing for floating fish is restricted to methods which are not injurious to the oyster or mussel beds.

An exclusive right to oyster and mussel fishing is not implied in the grant of a barony. It might be supposed that there was a greater probability of such a right being included in a barony charter than of the right of salmon fishing being so included, oysters and mussels being certainly a less important and less valuable subject. But a strong argument in favour of salmon fishing being so included is wanting in the case of oysters and mussels; the former are situated usually within the limits of the barony, the latter usually without it. In the case of oysters especially, this objection to their being included by implication in a barony title, has force, because oyster beds are usually situated at a considerable distance from the shore in deep water, and are therefore without the bounds even of a barony which is granted along with the foreshore. These considerations must not be overlooked in deciding the question, which is still an open one, whether a barony title, without mention even of fishings, is sufficient to found a prescriptive title to oysters or mussels.

An express mention of oyster or mussel fishing in the *tenendas* clause only of a charter, barony or otherwise, will not be sufficient to convey an exclusive right (*l*). Nor can the words *cum piscationibus*, occuring only in the *tenendas* clause of a barony or other title, form even a sufficient ground whereon to found a title by prescription (*m*). A clause of 'pertinents' will not of itself convey a right of oyster or mussel fishing, nor is it sufficient for that purpose even if followed by possession (*n*).

It has not been decided whether conveyance of the foreshore, or of the *solum* on which the oysters or mussels are

(*l*) *Agnew* v. *Magistrates of Stranraer*, 1822, 2 S. 42.

(*m*) *Kelly* v. *Ramsay*, 1776, Hailes, 722. It is to be observed, that in this case the lands were not the whole of the original barony, but only a part of it; and also that the possession was not exclusive, 5 Brown's Supp. 445.

(*n*) Ersk. 3. 7. 4. In *Innes* v. *Downie*, 1807 (Hume, 552), Lord Bannatyne said, *obiter*, that mussel beds passed as a pertinent, but in the present state of the law, the opinion is clearly erroneous.

situated conveys a right of taking the fish, though they are not mentioned in the charter. That such a conveyance with a clause *cum piscationibus* is valid to confer a right of mussel fishing, if followed by possession, has been decided in one case (*o*); but it seems somewhat against principle that a distinct private and patrimonial right, like oyster or mussel fishing, should be capable of being created by possession alone, or even in the absence of possession, without any written title as a foundation (*p*). At the date of the decision in the case of *Erskine*, the right of mussel fishing had not been conclusively established as the patrimonial estate of the crown; had it been so, it is scarcely likely that it would have been found capable of appropriation by a subject, merely by possession on a conveyance of the *solum*, a locality where the right could be exercised. The conveyance of a stream would certainly not carry with it the right of salmon fishing therein, and it is difficult to see how the mere conveyance of a stretch of sand or mud could be more effectual. It may be argued, that the purport of the most recent decisions is to establish that the right which the

(*o*) *Erskine* v. *Magistrates of Montrose*, 1819; Hume 558. From the report of this case, it is difficult to say how far the possession which had been enjoyed was relied on in sustaining the exclusive right. Proof of possession was held to be unnecessary; but there clearly had been a certain amount, sufficient, perhaps, as an assertion of the right. It is difficult to ascertain also whether it was the conveyance of the sands on which the mussels were fixed, or the clause *cum piscationibus* which was relied on by the court as giving a right to the mussel fishing. It must probably have been the former, for the latter could never have been considered a sufficient title without complete proof of prescriptive possession. Lord Justice Clerk Patton, however, in noticing the decision, thought it must have been in virtue of the grant of *piscaria* that the right was sustained. (*Duchess of Sutherland* v. *Watson*, 1868, 6 Macph. 199).

(*p*) In the case of the *Duchess of Sutherland* v. *Watson*, *supra*, Lord Neaves expressed an opinion, that a grant of the *solum* would of itself convey a right to mussels, without mention or without possession thereof. In the case before his Lordship, there was no conveyance of the *solum;* but his decision that mussels are the patrimonial property of the crown, was founded entirely on the view, that these molluscs are truly *partes soli*, accessories of the soil, and therefore partake of the character which his Lordship attributed to the *solum* itself. The adoption of this view would place the right to mussels and oysters in a subordinate position, similar in some respects to seaware, which may be gathered as an accessory of a private right to land.

crown posseses is a right 'to the mussel scalps,' and that a conveyance of the sand or mud bed or scalp is therefore equivalent to a right to the mussels (*q*); but if, on the other hand, the crown's estate is merely the abstract right of taking mussels—in other words, is not a corporeal right but an incorporeal right, capable of being feudalised in the same way that the crown's estate in salmon fishing is the abstract right of taking salmon—then a conveyance of the *solum* alone is insufficient, and mention at least of 'fishings' is necessary. The crown's right has certainly never been extended by decision beyond the right of taking mussels in scalps; it appears to have no right to mussel fishing except in connection with beds, and it might be argued that the connection between the two subjects—the mussel and the soil on which it rests—being thus so indissoluble, both legally and physically, the fish being *partes soli*, that a conveyance of the one necessarily implies a right to the other.

If it were to be held that a grant of the foreshore implied a right of gathering the mussels thereon, the question might arise whether a grant of lands not specially conveying the foreshore, but construed by possession to imply a right thereto (*r*), conveyed also a right of mussel fishing. If a conveyance of foreshore implies that right, a conveyance of lands which implies the foreshore must imply also the right which the foreshore contains; but the statement of the consequences is almost sufficient to disprove the soundness of the premises.

(*q*) Lord Neaves' opinion in *The Duchess of Sutherland* v. *Watson*, *supra*, went certainly to the effect, that the *ipsa corpora* of the mussels themselves, or, at any rate, of the mussel scalps, were the crown's property. His opinion was solely founded on the view, that the fish are *partes soli*, accessories of the soil, and that the property in them must therefore be of the same character as the property in the soil to which they are attached. The crown's patrimonial right to the foreshore, if it has such a right, is certainly to the soil itself, and therefore, in Lord Neaves' view, the crown's right to the mussels must be the same, and not merely an abstract right of taking them.

Skene (De Verb. Sig. *voce* Ware) says, that where a person is infeft in the shore, he is entitled to exclude the public from mussels, etc.; at least he quotes a decision to that effect. Balfour (Practicks, p. 626) reports the same case thus—a person *not* infeft in the shore can *not* exclude the public from these uses.

(*r*) *H. M. Advocate* v *Maclean*, 1866; Jurist, xxxviii., p. 584.

The right of oyster or mussel fishing, like all other heritable rights in Scotland, must be founded on a written title conveying the right either *ipsis verbis* (*s*), or in such terms as, by the aid of prescription, will be construed as equivalent. The phrase usually adopted in an express conveyance is, '*cum piscationibus ostrearum*;' or, '*cum ostreariis et mus-*' *culariis*;' while the words, '*cum piscationibus alborum piscium*;' or, '*cum piscationibus* (*t*) *in aquis salsis*,' are those which generally found a prescriptive title. The character of the title which is required to found a prescriptive right, and the requisites of the possession which is necessary to complete it, are discussed under the head of Salmon Fishing, the law regarding both subjects being similar (*u*). The leading case which established the rule that a right to oyster and mussel fishing may be acquired by prescriptive possession on a general title, is *The Duchess of Sutherland* v. *Watson* (*x*), a case which will be found instructive on all points connected with this branch of the law.

(*s*) The appropriate symbol of infeftment was an oyster shell (*ostreæ cochlea*). *Titles of Viscount Tarbat*, *Lord Morton*, and *Lord Prestongrange*.

(*t*) 'Piscationibus' is certainly not an appropriate word to apply to mussels or oysters, which are not fish but molluscs; but it has been found sufficient, and may be explained by possession to apply to shell fish. *Vide* Lord Neaves' opinion in *The Duchess of Sutherland* v. *Watson*, *supra*.

(*u*) Lord Gardenston's opinion in *Kelly* v. *Ramsay*, 2 Hailes 722.

(*x*) Jan. 1868, 6 Macph. 199. The rule is also supported by *Erskine* v. *Magistrates of Montrose*, 1819, Hume 558 (see note (*c*) p. 53); *Agnew* v. *Magistrates of Stranraer*, 1822, 2 S. 42; *Kelly* v. *Ramsay*, Hailes 722. No amount of possession without a written title will found a title. *Agnew* v. *Magistrates of Stranraer*, *supra*; *Duke of Buccleuch* v. *Magistrates of Edinburgh*, 1843, 5 D. 846; *Duke of Argyle* v. *Robertson*, 1859, 22 D. 261. In this case the right was not established, but solely in respect of exclusive possession not being proved. *Dempster* v. *Bowie*, 1863, *not reported*. In this case a proof was allowed in support of a general title. Stair, 2. 3. 69; Ersk. 3. 7. 4.

It has sometimes been supposed that even a special grant of oyster or mussel fishing required to be supported by exclusive possession of forty years, but the idea is opposed both to principle and authority. *Vide* Lord Cowan's and Lord Barcaple's opinion in *Duchess of Sutherland's* case, *supra*. If a grant from the crown to these subjects were an invasion of a previously existing right in the public, such exclusive possession might be required in order to signify the assent or acquiescence of the public to the alienation of one of their rights; but the right is not of a public

A grant of oyster fishing does not comprehend, nor can it be construed by possession to include, mussel fishing.

The rules which regulate the construction of a grant as to its *extent*, are similar to those hereafter discussed in relation to salmon fishing. More specific limits, however, are sometimes required in regard to oyster and mussel fishings, inasmuch as natural boundaries are not so clearly defined in the sea as in rivers. Oysters and mussels, however, are usually confined to a well marked bed or scalps; but in cases where they are not so, or where contiguous rights of property meet in the centre of a locality frequented by the fish, it may be necessary that artificial boundaries be set up, or an imaginary line drawn on a plan, in order to mark the limits of the coterminous rights (*y*). Where a right of oyster or mussel fishing is described as extending in breadth from a point out in the water to the shore, this will be construed as giving a right to the fishings in the space formed by drawing a line at that distance parallel and opposite to the line upon the shore by which the length of the fishings is described, and not merely to the fishings in a triangle formed by drawing lines from the point in question to each end of the line or shore (*z*). A grant of lands 'with the oyster and mussel fishings adjacent 'thereto,' in a bay mentioned by name in the charter, does not confer upon the grantee a right to the whole fishings in the bay, but only to those fishings which are *ex adverso* of the lands conveyed (*a*). This decision seems to establish that a

nature. Besides the ordinary prescriptive possession, such as is required in the case of salmon fishing, nothing further is required by the claimant; there is no necessity for a prescriptive possession of hindering and interrupting others, as might have been the case if the right had been originally a public one, and the right conferred by the crown merely a privilege or licence of taking them. (Stair, 2. 3. 60; Velvodious or Wellwood de Dominio Maris, cap. 3, p. 19.)

(*y*) Private oyster and mussel fisheries, established under 29 & 30 Vict. c. 85, or under the Sea Fisheries' Act 1868, must be marked out and defined in their limits as the Board of Trade directs.

(*z*) *Duke of Buccleuch* v. *Magistrates of Edinburgh*, 1843, 5 D. 846.

(*a*) *Maitland* v. *M'Clelland*, 1860, 23 D. 216.

grant of fishings in the sea 'adjacent to' certain lands, is equivalent, and no more, to a grant of fishings *ex adverso* the lands, and that no more extended construction can be given to it (in the absence of explanatory possession), even where there are no competing grants. Where the neighbouring proprietors also possess grants of the oyster and mussel fishings in the sea adjacent to their lands, it is plainly necessary that the coterminous rights should be limited to *ex adverso* the lands, or there would be a confusion of rights. A grant of oyster or mussel fishing in the sea *ex adverso*, or adjacent to certain lands, conveys a right extending as far seawards as the three mile boundary, which is the limit of the crown's right; but if the lands are situated on the margin of a bay, or firth, or narrow strait, the right of oyster or mussel fishing which is granted in connection with them, extends even to the opposite shore, or at least until it is met by an opposing right. A grant of oyster or mussel fishings 'in the waters 'adjacent to' certain lands, or in other terms not specifically defining the boundary of the right, may be construed by possession to extend to any limits which the terms will admit of, provided they do not come into collision with any prior grant or prior established prescriptive right.

Oyster or mussel fishings, if of sufficient value, afford a title to a freehold qualification, and confer the elective franchise (*b*).

Navigation as affecting Oyster Beds.—The right of navigation is superior to the rights of fishing, and must not be interfered with by operations connected with oyster or mussel beds; but the supereminent right must not be used *in æmulationem vicini*, or so as wilfully to injure the inferior (*c*).

(*b*) Wight's Election Law, p. 199; Bell's Election Law, p. 51.

(*c*) *Mayor of Colchester* v. *Brooke*, 7 Queen's Bench Reports, 339; *Colquhoun* v. *Duke of Montrose*, M. 12827; *Grant* v. *Duke of Gordon*, 9 March 1802, 20 Feb. 1782, F. C.; Sea Fisheries' Act, 1868, § 54.

Theft of Oysters or Mussels.—By the common law, oysters or mussels are incapable of being made the subject of theft (*d*); but by statutory enactment it is larceny to remove them from the beds or scalps without permission of the proprietor or lessee. With regard to oysters, the law in this country is regulated by the Scotch Act 3 & 4 Vict. c. 74, which proceeds on the preamble, that it is expedient to extend the English Act 7 & 8 Geo. IV. c. 29, to Scotland. There appear to have been earlier statutes to this effect, such as 31 Geo. III. c. 51 (1751), entitled, 'An Act for Better Protecting the 'Several Oyster Fisheries within this Kingdom;' but this Act, and also the succeeding Acts of 48 Geo. III. c. 144, and 7 & 8 Geo. IV. c. 29, § 36, were limited to England (*e*). Mussel beds are protected by a similar enactment,—the Act 10 & 11 Vict. c. 92. These two Acts, the one relating to oysters and the other to mussels, made it theft to remove the fish from the beds without permission, but they did not vest the *property* in the person who has the exclusive right to take them (*f*). A subsequent Act, however, the Sea Fisheries' Act of 1868, 31 & 32 Vict. c. 6 (repealing and superseding

(*d*) It seems an abuse of terms to speak of oysters and mussels as *ferœ naturœ*. They are practically incapable of locomotion, and, in the opinion of one learned judge (Lord Neaves' opinion in *Duchess of Sutherland* v. *Watson*, etc., 1868, 6 Macph. 199), have been pronounced to be *partes soli*, and the crown's right to them has been pronounced to be exactly the same as, and indissolubly connected with, the right to the foreshore. In this view, the right of the crown, or of its grantee, to oysters or mussels, seems to be an absolute corporeal right, differing altogether in character from the right to the other minor regalia, which, with the exception of the foreshore, are merely incorporeal rights, capable of feudalization. The logical consequence of this theory seems to be, that it would be theft at common law to appropriate and carry away oysters or mussels from the scalp. It would be unsafe, however, to ground a charge of oyster or mussel stealing on any other than the statutory foundation.

(*e*) Hutcheson (*Justice of the Peace*, ii. 603) seems to have thought that the first of these Acts extended to Scotland; but Blair (*Justice of the Peace*, 86) expresses a more correct opinion.

(*f*) If oysters or mussels have been planted or placed on a bed artificially, they seem in principle to be as much *property* as pheasants in a pheasantry; and mussels, which adhere to the soil, seem to be as much so as trees. It might be argued, that that which by statute is left at the disposal of an individual, to take it comes to be theft at common law. See note (*d*).

the intermediate Oyster Preservation Act, 1867, 30 & 31 Vict. c. 18), declared that oysters and mussels, in an oyster or mussel bed or fishery, whether it be a fishery constituted by an order under the Act, or merely a private bed owned by any person independently of the Act, and oysters or mussels that have been removed from either of these localities, are the actual property of the owner of the bed, to all purposes, civil or criminal.

The statute 3 & 4 Vict. c. 74, enacts (§ 1), 'That if any 'person shall wilfully and knowingly take and carry away 'any oysters or oyster brood from any oyster bed, laying, or 'fishery, being the property of any other person or persons, 'body corporate or politic, or sufficiently marked out or 'known as such, every such offender shall be deemed guilty 'of theft, and being guilty thereof, shall be liable to be sen-'tenced to imprisonment not exceeding the term of one 'year.' The dredging for oysters within such limits, even though none are taken, is to be considered as an attempt to commit theft, and is punishable by fine or imprisonment or both, the fine not to exceed £20, and the imprisonment not to exceed three months (*g*). The Act 107 11 Vict. c. 92, contains similar provisions for the protection of mussel beds (*h*). There is a reservation in § 3 of this latter Act, of existing public rights of taking bait from the scalps; but the law is

(*g*) § 1. There is no forfeiture of implements. There was a conviction for this offence in *Thomson and Mackenzie*, 1842, H. C., 1 Broun 475.

(*h*) In an indictment under these Acts, it is not necessary to specify or to prove from which of two contiguous oyster beds the theft was committed. Sea Fisheries' Act 1868.

The Acts require that the *locus*, the taking of oysters or mussels from which is theft, shall be 'sufficiently marked out or known as such.' No difficulty appears to have been experienced in practice as to this definition, but from the nature of such fisheries, it is very likely that questions may arise as to whether certain localities come under this definition or not. If the fishery is established under the provisions of the Sea Fisheries' Act 1868 (which repeals and supersedes the Oyster and Mussel Fisheries' Act 1866, 29 & 30 Vict. c. 85), the order issued by the Board of Trade may prescribe the manner in which the limits are to be marked out. A certificate from the Board of Trade is sufficient evidence that the limits have been duly defined and marked out.

now fixed, that in the absence of crown grant no such rights exist.

Protection of Oyster and Mussel Fisheries.—Oyster and mussel beds, whether constituted by an order under the Sea Fisheries' Act 1868, or owned as private beds by an individual independently of the Act, are, by the Sea Fisheries' Act, protected from various kinds of injury. Any person who commits any of the offences undernoted is subjected to a penalty of £2 for the first offence, £5 for the second, and £10 for the third or any subsequent offence, besides being liable in damages. The prohibited Acts are—

The using any implement of fishing, except a line and hook, or a net adapted solely for catching floating fish, and so used as not to disturb or injure in any manner any oyster or mussel bed.

The dredging for any ballast or other substance except under a lawful authority for improving the navigation.

The depositing of any ballast, rubbish, or other substance.

The placing any implement, apparatus, or thing prejudicial, or likely to be prejudicial, to the beds, except for a lawful purpose of navigation or anchorage.

The disturbing or injuring in any manner, except as last aforesaid, any oyster or mussel bed.

In order to obtain for any oyster or mussel fishery the benefit of the protection of the Act, it is necessary that the fishery, if constituted under the Act, should be marked out and defined as directed by the order of the Board of Trade; or, in the case of a private fishery independent of the Act, that it should be sufficiently marked out and known as such.

The above enactments for the protection of oysters and mussels are limited in their application to oysters and mussels in the scalp. Taking scattered oysters or mussels from the shore, or interfering with them in any manner, is not a

criminal offence, nor has it been found to constitute an infringement of private property.

Where a person accused of the statutory offence of stealing oysters or mussels has no right to be upon the scalp, there can be little difficulty, when the facts are proved, in obtaining a conviction; but a case of some nicety may arise where the accused has a right from the proprietor to be upon the scalp. In a recent case (*i*), a proprietor of oyster beds granted a lease to certain parties of the right to take oysters over two inches and a half in diameter, but not under that size, and specially bound them to return the small ones to the sea. The lessees, however, took some under the stipulated size, and were prosecuted for theft under 3 & 4 Vict. c. 74. It was pleaded for the panels that the offence which the statute elevated into a crime was the illegally *intruding* on the beds and taking and carrying away oysters, and that as the accused were legally on the beds for the purpose of taking oysters by the permission of the proprietor, a mere breach of the regulations imposed by him, and which were the subject of a civil contract between him and them, could not constitute the crime of theft. The panels also pleaded, that the criminal prosecution was an attempt on the part of the proprietor to punish them for the contravention of regulations arbitrarily imposed by him, in the same way as for a breach of public law. The court, however, were unanimous in holding that the offence constituted the crime under the second section of the statute, and was properly so libelled in the indictment. The regulations and penalties imposed by the proprietor could not shut out the public prosecutor. The panels, it is true, by obtaining a licence from the proprietor to fish for oysters, had taken themselves out of the operation of the Act as far as concerned the taking of full sized oysters; but when they exceeded the limits of their licence, they had brought them-

(*i*) *Garret* v. *Edgar*, H. C. 1866; 5 Irvine 259.

selves back under the Act, and were properly prosecuted for theft (*k*).

Artificial Cultivation of Oysters and Mussels.—The Sea Fisheries' Act of 1868, 31 & 32 Vict. (repealing and superseding the Oyster and Mussel Fisheries' Act of 1866, 29 & 30 Vict. c. 85 (*l*)) was passed with the object, among others, of encouraging and facilitating the establishment, improvement, and maintenance of oyster and mussel fisheries. By this Act, under which a private right can be conferred on an individual in the same manner as by charter from the crown, any individual or company desirous of establishing an oyster or mussel fishery, may apply to the Board of Trade (*m*) for an order giving authority to do so; and the Board of Trade, after copies of the draft order have been circulated, and after notice has been given to the owners and occupiers of the shore, and opportunity afforded to them for giving in objections or representations, may appoint an inspector to take evidence on the subject, and to report. After the report of the inspector and objections thereto have been considered, and after due

(*k*) The practice thus authorised by the court differs from that adopted in Ireland and England. In Ireland there are regulations by the Fishery Commissioners prohibiting the taking of oysters under a certain size, and persons contravening the regulation are prosecuted for penalties under the Act which authorises the regulations of the commissioners. By the Tweed Act, 20 & 21 Vict. c. 148, § 73, any person fishing for trout who takes a salmon, must give it up to the owner of the fishery; if he retains it, the act is not theft, but he becomes liable to a statutory penalty.

(*l*) All orders made under the earlier Act are to have effect and be proceeded with as if they were made under the recent Act.

(*m*) The management of the *jus regale* to oysters and mussels is in the hands of the Commissioners of Woods and Forests. The patrimonial rights of the crown are, generally speaking, all in the hands of this department; but by a recent Act (29 & 30 Vict. c. 62, § 7) the management of the foreshore has been transferred to the Board of Trade. Oyster and mussel fisheries are naturally of a cognate character, and the management of artificial scalps is by the above Act intrusted to the Board of Trade. There has been no enactment removing the *jus privatum* in oyster and mussel fishings from the Woods and Forests, to whom the hereditary revenues of the sovereign are presumably intrusted; and in so far as these subjects are productive of revenue, they are intrusted to the management of that department.

consent obtained from the Commissioners of Woods and Forests, or other department in whom the management of that portion of the shore may be vested (*n*), the Board of Trade may grant an order, which, after due notice and publication, must be confirmed by Act of Parliament (*o*).

The effect of an order thus obtained from the Board of Trade, is to confer upon the grantee the sole right, within the limits mentioned, of cultivating or taking oysters and mussels, and of removing at any season, from place to place, oysters or mussels, and of everything necessary for obtaining, storing, and disposing of the produce of the fishery (*p*). The Board of Trade, without conferring a right of several fishery, may issue an order regulating an oyster or mussel fishery, making restrictions respecting dredging and fishing for oysters or mussels within the fishery, and imposing tolls or royalties upon persons fishing. The tolls and royalties are to be employed in the improvement and cultivation of the fishery; and the offence of fishing without paying the toll or royalty is punishable by a penalty not exceeding £20, and the forfeiture of the oysters or mussels taken, or a sum equal to their value (*q*).

Fisheries established under the Act are declared to be, for purposes of jurisdiction, within the adjoining county or counties. The order of the Board of Trade, conferring a right of private fishing, is not to be for a longer period than sixty years at once; and it may be recalled, if it appears that no adequate benefit is derived from it (*r*). No order is to be made by the Board of Trade affecting the rights of parties, under any local act, without the consent of such parties. Copies of the order, or Act of Parliament, establishing the fishery, are to be kept for sale, and the Board of Trade is to make an Annual Report to Parliament of their proceedings under the Act.

(*n*) §§ 47, 48.
(*o*) For details of necessary procedure, *vide* §§ 29–39.
(*p*) § 40.
(*q*) § 41.
(*r*) §§ 43-46.

Close time.—A close time for oysters, from 16th June to 1st September, as well as other restrictions connected with oyster fishing, is enacted by the Sea Fisheries' Act of 1868, which was passed to give effect to the Fishery Convention with France of 1867; but this close time and regulations are restricted in their operation to the waters of the British Channel.

LOBSTERS.

Title.—It is doubtful whether lobster fishing is capable of being made the subject of exclusive grant to an individual. The question has not been raised, and the authorities point to no certain conclusion (*s*). It is certain, at all events, that the exclusive right is not carried by a general grant of fishings without express mention of lobsters, or without exclusive possession for the prescriptive period following upon a general grant (*t*). But it is doubtful whether an express grant of lobster fishing could validly confer a right; and whether the crown's right of property in lobster fishing is of such a kind that it can, either in its own person or in the person of a grantee, exclude the public. Oysters and mussels, on the one hand, are certainly in *patrimonio principis*, and consequently capable of private grant; but on the other hand, the right of fishing for white floating fish in the sea is, or may be assumed to be, public. Lobsters seem to hold, as regards their physical characteristics, an intermediate position between the two; they are capable of locomotion with ease, swim swiftly and frequently from place to place in the sea, and are in a great measure independent of the rocks upon the coast, and possess, in short, characteristics *ferœ naturœ*, which cannot be attributed to oysters or mussels. On the other hand, they are

(*s*) Bell's Prin. 646; Burton's Man. p. 213; *Ramsay* v. *Kelly*, 1776, 5 Br. Supp. 445. The dictum here is a loose one, and the judges were much divided in opinion (2 Hailes 722).

(*t*) *Duke of Portland* v. *Gray*, 1832, 11 S. 14.

chiefly found at certain seasons attached to the shore or near it (*u*). On the whole, it would seem, that lobsters by their nature and habits partake more of the character of floating fish; and the principle which regulates the right to capture them, should be the same as that which applies to this species of fishing. The *ratio decidendi* in the case of oysters and mussels, by which they were found to be the patrimonial property of the crown, was chiefly their close connection with the soil, and their eminent susceptibility of appropriation (*x*): these considerations do not apply, at least with anything like equal force, to the case of lobsters; and it is thought that the right to fish for this species of fish, at least where the mode of fishing is disconnected with the land (*y*), is *juris publici*, and must be governed by the rules which apply to white fishing. If the right be a public one, it cannot be appropriated to an individual, either by express grant or prescriptive possession; but if, on the other hand, it is in *patrimonio principis* (and on this supposition alone can it be held to be alienable by grant), then prescriptive possession on a general part must be considered equivalent to an express conveyance.

Close Time.—The Act 9 Geo. II. c. 33, § 4, imposes a close time for lobster fishing from 1st June to 1st September. An infringement of the regulation subjects the offender to a penalty not exceeding £5 for each offence. The case, on summary complaint, may be tried before two justices of the

(*u*) Edinburgh Encyclopædia (Brewster's) art. Crustaceology, p. 399; Note by Sheriff in *Portland* v. *Gray*, 1832, 11 S. 15; Scoresby's Arctic Regions, i. 541.

(*x*) In the case of *Duchess of Sutherland* v. *Watson*, 1868, 6 Macph. 199, Lord Neaves founded his opinion in favour of the patrimonial character of mussels on the ground of their being *partes soli*—a characteristic which certainly cannot be attributed to lobsters.

(*y*) Lobster fishing seems to be usually carried on in deep water from boats, and frequently at a considerable distance from the shore. In catching them, it is not necessary to land and seize them among the rocks. See note by Sheriff in *Portland* v. *Gray*, 1832, 11 S. 15. Edinburgh Encyclopædia (Brewster's) art. Crustaceology, p. 399.

peace; and the penalty awarded is given to any person who brings the complaint.

Limpets, etc.—The right of taking limpets, cockles, wilks, and similar small shell fish, below high water mark, belongs to the public, and, being vested in the crown, not as a private right, but as a popular privilege, it is incapable of grant to, or appropriation by, an individual. Neither express grant, nor exclusive possession following upon any kind of title, can exclude the lieges (*z*). The law regarding the right of property in these species of molluscs differs from that which relates to oysters and mussels, partly, no doubt, from the different habits of the fish, and partly from the different value of the subject (*a*). That the right to limpets, etc., is public, and is incapable of grant, is deduced from the general authorities on the subject; but the only point which has been expressly decided in relation to this species of fishing, is, that a general grant of fishings, even when held by the proprietor of a barony, is not sufficient to exclude the public (*b*). In the case referred to, there was neither express grant of the fishings in question, nor of the foreshore, nor yet prescriptive possession of the right, but had there been any, or all, of these elements, there is nothing to show that the Court would have sustained the title.

(*z*) Balfour's Practicks, 626; Bell's Prin. 646; *Tait's Cases* v. *Property*, 5 Br. Supp. 556 and 7. *Hall* v. *Whilis*, 1852, 14 D. 324, *per* Lord Justice Clerk. The English law on this subject appears to be different. *Bagot* v. *Orr*, 2 B. & P. 472.

(*a*) Some of the smaller shell fish have considerable powers of locomotion. They are able to progress several feet in the course of an hour; and constantly change their locality. See also Statistical Account of Scotland, vol. 8. p. 48. Limpets, etc., moreover, are not the subject of artificial cultivation, nor are they found collected together on scalps as oysters and mussels. It must be borne in mind that it is only oysters and mussels in the scalp that are declared to be *in patrimonio principis*, and the same law applies to scattered fish of that description, as to limpets and whelks. The circumstance that the latter are chiefly used as bait for white fishing, which is partly relied on in the case *Hall* v. *Whillis*, must now be rejected as a conclusive argument in favour of the public character of the right; in a mussel case (*Duchess of Sutherland* v. *Watson*, 1868, 6 Macph. 199) the Court attached no weight to it.

(*b*) *Hall* v. *Whillis*, *ut supra*.

Pearls.—Pearls in their natural state are stated by Erskine (2. 1. 10.) to belong to the finder; and no doubt they do so, when the mollusc or shell of which they form part is of a kind, and in a situation, open to the appropriation of the public; but where oysters and mussels are private property, or where the right of taking them is a private estate, the pearls which are found in them, or the right of taking pearls from them, must also be considered as private.

CHAPTER V.

SALMON FISHING—TITLE.

A RIGHT of salmon fishing is a separate heritable estate, and being so, it is, like all the lands and real rights in Scotland, vested in the crown according to the feudal principle (*a*). The right is not of the nature of a franchise, monopoly, or exclusive privilege, but is emphatically an heritable estate. It is needless to speculate on the circumstances from which this susceptibility of appropriation took its rise, but it probably originated in the value of the fish (*b*); salmon fishings being often attended with as great pecuniary advantages as the property of the land itself, were therefore considered as too high an interest to be carried by implication in charters from the crown (*c*). The property which is thus vested in the crown, is the exclusive right of fishing for and capturing the salmon; the fish itself, the *ipsum corpus* of the salmon, being while yet uncaptured, like other wild animals, *res*

(*a*) Stair, 2. 3. 69; Erskine, 2. 6. 15; Craig's Jus Feudale, 1. 16. 38 and 2. 8. 15. The origin of the crown's right is traced to a Constitution of the Emperor Frederic.

(*b*) *Per* Lord Chancellor in *Gammell* v. *Commissioners of Woods, etc.*, 3 Macq. 455; Lord Glenlee (4 Shaw, 649) thought it was 'for the sake of peace.' Ross' Laws of Hunting, etc., Ed. 1809, p. 51; Ross' Lectures, ii. 173.

(*c*) Ross' Lectures, ii. 172. It is stated in another work, by a different author (Ross' Laws of Hunting and Fowling, 1809), that salmon fishing was, at a very early period, common property; and that under the reign of the same Alexander, in whose time the right of hunting and fowling was common, excepting in forests and warrens, all the lieges were at liberty to kill salmon excepting in waters that ran directly to the sea.

nullius, incapable of appropriation, except by *occupatio* (*d*). The salmon is thus not a royal fish in the proper sense of the word. It is not like sturgeons or whales, the property in which truly belongs to the crown. The right of the crown to salmon fishing is a patrimonial or beneficial right, forming part of the *patrimonium principis*, a portion of the royal hereditary revenue; it is not merely an attribute of the sovereign or a right of regulation and superintendence, to be exercised for the public benefit, in the same manner as the right of sea fishing is vested in the crown to be managed for behoof of the lieges (*e*). The salmon fishings, like the rest of the

(*d*) Ersk. 2. 1. 10. It has been considered a subject of doubt, wherein consists the right of the crown to salmon fishing,—whether it is a right to fish for the salmon, or a right to the fish themselves, which is commonly called a right of salmon fishing, as it is only by fishing that the property can be made available. There are, no doubt, authorities in favour of the latter view, and expressions have been used by the judges which give colour to the doctrine, that the *ipsum corpus* of the fish is *inter regalia* (*e. g.* p. 1365, 6 D. *Ferguson* v. *Shirreff*), but it is thought that the better opinion is that expressed in the text.

The crown holds the right of fishing *salmon*, but it may be questioned whether that right extends to *all fish of the salmon kind*. In recent salmon legislation, the word 'salmon' is expressly declared to possess the wider signification, but natural history and the common interpretation scarcely warrant the construction. Sea trout and bull trout are perhaps 'fish of the salmon kind,' and the Salmon Acts expressly declare them to be included in their operation; but in a question of title, can the right to fish for them be held to be *inter regalia*? The *rationale* of the crown's right to salmon is, as we have seen, the value of the fish, an argument which does not apply with equal force to bull trout, herling, etc. These fish, along with *salmonidæ* of smaller size, inhabit the lesser rivers and streamlets in common with the yellow trout, from which they are almost undistinguishable in size, and it seems anomalous, that to fish for the one, a crown charter should be necessary, while the right of fishing for the other is an accessory of the soil. If the whole race of salmonidæ, including bull trout, herlings, etc., are to be considered as *inter regalia*, the best practical test of royal property would be the *migratory* habits of the fish.

A salmon, at common law, belongs to the captor, even though he has fished without a title. There are, however, numerous statutory enactments by which the captured fish are forfeited.

(*e*) Stair and Erskine, *ut supra*. *Gammell* v. *Commissioners of Woods and Forests*, 13 D. 854; 3 Macq. 419. In saying that the right of salmon fishing is a *jus regale*, it must be remembered that the term *regalia* includes all the *res publicæ* of the Roman law, subjects which are now held to be vested in the sovereign, in his character as trustee for the public. These latter are held by the crown as *jura publica*; but the right of salmon fishing, in common with some others, is a *jus privatum*.

crown property in Scotland, was, up till the year 1832, under the management of the Barons of the Court of Exchequer, but by the Act 2 & 3 William IV. c. 112, it was placed under the management of the Commissioners of Woods and Forests (*f*).

The original right of the crown to salmon fishing in Scotland is, geographically speaking, universal, and extends to the sea, to estuaries and to rivers (*g*). With regard to the extent of the crown's right to salmon fishing in the sea, it may be held as extending not more than three miles seawards, which extent only, by the law of nations, belongs to the country (*h*); and as limited to such modes of fishing as are carried on in connection with the land (*i*). The salmon fishing round the coasts of Scotland belongs to the crown (*k*), as well as in public and private rivers and streams (*l*). It has been laid down, that the right

(*f*) Actions relating to the crown's right of salmon fishing are brought at the instance of the Lord Advocate, acting on behalf of the department, under the statute 20 & 21 Vict. c. 44, which also prescribes the form in which actions are to be brought. It is not necessary in a summons under this statute, that special authority from the crown should be averred. *Maitland* v. *M'Clelland*, 1860, 23 D. 216.

(*g*) Stair (2. 3. 76) seems to be of opinion, that it is only in rivers and in the sea at water mouths that salmon fishing is a *regale*, but the law has been fixed, as stated above, by *Gammell's* case, *supra*. See also 7 & 8 Vict. c. 95.

(*h*) Lord Wensleydale in *Gammell's* case, *ut supra*. See note (*b*) p. 18.

(*i*) There does not appear to have been discovered any means of fishing salmon advantageously in the sea from shipboard, or otherwise than in connection with the land. Salmon fishings of such a kind, even in the territorial seas, could scarcely be brought under the decision in *Gammell's* case. *Vide* reports of case; also Lord President's opinion in *Ramsay*, 2 Hailes, 722.

(*k*) For a long time the rights of the crown and of private proprietors as to salmon fishing in the sea remained undecided; indeed, before the introduction of state and bagnets, the sea fishings were not comparatively valuable. In 1849, the question was finally set at rest by the decision in the case of *Gammell* v. *Commissioners of Woods and Forests*, 6th March 1851, 13 D. 854, and 3 Macqueen, 419. The point was there exhaustively argued; authorities on both sides of the question are fully quoted; but to enter into and analyze them, and to estimate the weight which must be accorded to each respectively, would be beyond the scope of the present treatise, which is intended not as a historical view of the law on this subject, but as a statement of its present position.

(*l*) It has been said that a right to fish salmon in the small rivers in which a few fishes are only now and then got, is commonly given with the adjacent lands. This may be so, but even in such cases the right still remains with the crown, unless granted away; though the crown, where the fishing is not valuable, may not inter-

of the crown is not merely a right of fishing for salmon, but 'a 'right to the salmon fishing round the sea coast of Scotland.'

Right of Angling for Salmon.—The original right of the crown to fish for salmon extends to every method by which the fish can be captured, and is not limited to net and cobble, or the higher methods. It has been supposed by some that the right of angling was excepted from the rule, and that by reason of its lesser value, fishing by the rod and line is not *inter regalia.* It has been contended that a crown charter did not convey to the grantee an exclusive right of fishing with the rod, and that this privilege was held by the riparian proprietor, not in virtue of any grant, but as an accessory of his lands. There has, undoubtedly, existed a vague idea to this effect, and some authority has been quoted in support of it. Professor Bell in his *Principles* (§ 671 and § 1112) excludes the right of angling from the regalia, and a similar view is expressed by Professor More (*m*). The theory is supported by the two old decisions of Leslie (M. 14249) and Gairlies (*Ibid.*), and has been adopted by a subsequent writer (*n*). It has also been argued that the circumstance that net and coble is the symbol of infeftment used in a conveyance of salmon fishing, indicates that the crown's right is limited to that method. The doctrine, however, has been demolished by the opinion of the judges in *Duke of Sutherland* v. *Ross* (*o*), and in the more recent case of *Anderson* v. *Ander-*

fere to assert its right. At an early period it was thought that the right was not *inter regalia*, except where the sea filled or salt water came, and that under other circumstances, it passed with a clause *cum piscationibus.* See cases of *Leslie* and *Gairlies*, M. 14249. But this view has since been rejected by the Court. *Duchess of Sutherland* v. *Ross*, 11th June 1836, 14 S. 960.

(*m*) Lectures, i. 509; also Bell's Dict. *voce*, 'Salmon fishing.' An old authority, 'Ross' Laws of Hunting and Fowling, etc.,' 2d, 1809, p. 51, thinks that angling for salmon is a riparian right, but that it must be exercised only as an amusement, or for the use of the family of the proprietor.

(*n*) *Paterson's Fishery Laws of the United Kingdom*, p. 174. The Sheriff-substitute of Aberdeen also decided, in 1866, in favour of a public right of angling in tidal rivers.

(*o*) 11th June 1836, 14 S. 960. This case is erroneously quoted by Mr Paterson as supporting the opinion which he holds. The case of *Guthrie* v. *Dunbar*, 27

son (*p*). Professor Montgomerie Bell's *Lectures* may also be referred to, as stating the law as above described (*q*). The case of *Anderson*, just mentioned, had reference to the river Forth, a tidal and navigable stream, and the respondent, who had no right even to the adjoining lands, but who was simply a member of the public, argued that he stood in the same position with reference to a tidal river as a riparian proprietor with reference to a private stream, namely, that he might angle for salmon though there be a crown grant to another. The argument was rejected, and a doctrine which has long been dear to anglers, received its *coup de grace*. In small rivers angling is frequently the only method of salmon fishing which can be practised, and if the right of fishing with the rod were held to be an accessory of the riparian property, and if the crown grantee were excluded from exercising it, his right would be utterly defeated. The absurd consequence would be, that the holder of a title would be superseded by the party who had none (*r*). Where the salmon fishing is granted to one who is not the proprietor of the lands, it carries with it the right of angling, to the exclusion of the riparian proprietor; and where the right of salmon fishing remains in the hands of the crown, the right of

June 1855, 17 D. 1002, has also been quoted in support of the doctrine, but it does not bear that construction. In that case there was not, in competition with the alleged riparian right, a special grant from the crown. The right of the proprietor of the salmon fishings to fish with the rod *ex adverso* of the respondent's land was not negatived; it was only decided that in the circumstances, it required to be established by a declarator.

(*p*) 25 November 1867. Justiciary Court. Scottish Law Reporter, vol. v. p. 58.

(*q*) P. 568. See also *Mackenzie* v. *Rose*, 6 Wilson and Shaw, p. 31; and *Carmichael* v. *Colquhoun*, 20 November 1787, M. 9645.

(*r*) There are not a few Scotch proprietors who possess their lands without the adjunct of salmon fishing in the adjacent streams; their unfortunate position has been known to themselves; the law which permits a third party to draw his nets at their very door, while it denies to them the right of even casting a line for sport, is daily deplored, but is fully recognised; and they are well aware, that as a consequence of the failure of their ancestors to acquire a grant of salmon fishing from the crown, they are deprived of a privilege which would enhance both the value and the pleasure of their possessions.

angling remains there also (*s*). The right of the crown must always be as extensive and as exclusive as the right of its grantee. The right of fishing is always subservient to the superior right of navigation (*t*).

The right of salmon fishing being thus the property of the crown, and being alienable like the other *jura privata* as distinguished from the *jura publica*, is made available by permanent grants or temporary leases to individuals. The right can only be held by a subject under a specific grant from the crown, or what is equivalent to a specific grant. Salmon fishings have, from a very early period, been the subject of grants by the crown, and the fishings in rivers which yet remain vested in the sovereign, are probably not of great extent. Crown grants were issued up till the year 1832, by the Barons of the Court of Exchequer in Scotland, under whose management the patrimonial property of the sovereign was placed; but by the Act 2 & 3 William IV. c. 112, the administration of these subjects was transferred to the Commissioners of Woods and Forests. From the Union up till that period, it appears to have been the practice for the crown to grant to the proprietor, whose lands adjoined the sea shore, the right of salmon fishing *ex adverso* of his property, for a very small consideration (*u*); but since that time the practice of making grants in fee of salmon fishing from

(*s*) Where salmon fishings are held by the crown, and not leased by them to a subject, the privilege of fishing is customarily enjoyed by the public. The crown, however, is of course entitled to prosecute such encroachments in the same manner as a private proprietor. In some of the tributaries of the Tweed, the right of salmon fishing remains vested in the crown, and prosecutions have been raised under § 15 of the Act of 1859, against persons fishing for salmon in those waters without a title.

(*t*) *Colquhoun* v. *Duke of Montrose*, M. 12827; *Grant* v. *Duke of Gordon*, 9 March 1802, F. C.

(*u*) The charters for seashore salmon fisheries have not exceeded a score in number since the Union. The earliest appears to be in 1603. There are scarcely any after 1778, and only one within this century. The use of stake nets was not introduced till about 1819, and of bag nets till about 1822, so that though these engines are now considered legal on the open coast, that method of fishing could not have been contemplated by the crown at the time the grants were made. That

the crown appears to have been almost discontinued. It was not, however, till some years later that the property of the crown in the salmon fishings on the sea shores of Scotland was placed on its present footing by the decision in the case of *Gammell* v. *the Commissioners of Woods and Forests.*

The grants by the crown of salmon fishings in the sea are not so numerous as those of fishings in rivers; and although some grants have been made of fishings in the sea, there appears to be altogether a considerable extent of coast upon which the salmon fishings still belong to the crown. The Commissioners of Woods and Forests, since the salmon fishing belonging to the crown was placed under their management, have almost, if not entirely, discontinued the practice of making grants in fee, although, except as regards the royal forests and parks, they possess a general power of sale of crown property. In granting leases of royal property they are bound to see that a fair annual value is paid for it. The salmon fishings on the coasts and rivers of Scotland, which is still retained in the hands of the crown, is in some cases of such value that the Commissioners of Woods would not be entitled to alienate it except for an ample consideration; but there may exist cases where the right of salmon fishing in some of the smaller rivers still remains the property of the crown, and has not been granted along with the lands to the proprietors whose lands adjoin the river, or separately to another individual. In cases of this character, where the right is by itself of little value, where no substantial rent could be procured for it if leased as a separate tenement, and where its chief value is as an adjunct of the neighbouring property, the Commissioners would probably not refuse to part with it to the proprietor of the adjacent lands, in return for a small and perhaps nominal, consideration. There would

some kind of fixed engine was used in sea fishing during the whole course of these statutes, appears to be probable; but they must have been of a much ruder and less effective description than the modern stake net.

be less probability, however, of such a concession being made if the right was to any extent under dispute, or if the grant of the monopoly was likely to interfere with the use of the public, who, for the sake of pleasure or of sport, had been accustomed to exercise the privilege of fishing on the waters in question.

Title to Salmon fishing—The right of salmon fishing being a separate estate, the crown may make a grant to a subject of lands adjacent to a river, reserving to itself the right of salmon fishing; or the crown may make a grant to a subject of the right of salmon fishing in a river, although the grantee have no property in either bank (*x*).

The precise right or subject which is conveyed by a crown grant, is not a right to all the salmon that come into that part of the river, but a right merely to fish in a manner consistent with the rights of others. A common interest in the produce of the stream is constituted. The crown, in granting to an individual a right of salmon fishing in a public river, cannot give along with it the right of placing any permanent obstruction in the channel (*y*).

The right of salmon fishing, like all other heritable rights in Scotland, must be founded on a written title, conveying the right either *ipsis verbis*, or in such terms as, by the aid of prescription, will be construed as equivalent. The phrase usually adopted in a direct conveyance is, '*cum piscatione salmonum*;' while the words '*cum piscationibus*,' *cum* '*piscariis*' (*z*), or '*cum piscibus*' (*a*), are those which generally found a prescriptive title. The conveyance requires a sepa-

(*x*) Ersk. 2. 6. 15.

(*y*) *Colquhoun* v. *Duke of Montrose*, etc., 1793, M. 12827; *Hay* v. *Magistrates of Perth*, 1863, 4 Macq. 535.

(*z*) In the old case of *Forbes* v. *Udney*, 1701, M. 14250 and 7812, a charter which bore only *cum piscariis* was sustained without prescription. It was argued that the word *piscaria* carried all sorts of fishing; but there seem to have been other reasons for sustaining the title.

(*a*) *Fotheringham* v. *Clavers*, Brown's Supp. iii. 639.

rate infeftment as well as a separate grant, the appropriate symbol (while symbols of infeftment were in use) being net and coble.

A right to salmon fishing is not conferred by the mere erection of lands into a barony, unless there be special mention of salmon fishing. This opinion is expressed contrary to the doctrine of Stair (*b*), who maintains that the erection of lands into a barony conveys *eo ipso* to the grantee many of the *regalia*, *baronia* being *nomen universitatis* (*c*); and among those which are tacitly carried under the name of barony, though not expressed, he mentions salmon fishing. Erskine (2. 6. 18), however, attributes to Stair a different opinion; and holding the opposite view himself, conceives Stair to admit that no immediate right to salmon fishing is acquired by the privilege of barony, and that it affords to the baron barely a title for prescription. An examination of the opinion of Stair himself, shows that in opposition to subsequent authorities, he considered a grant of barony as *eo ipso* a complete title to salmon fishing (*d*). But the peculiarities of a grant of barony as described by Erskine, which have never been questioned, preclude the idea of any subjects which are not parts and pertinents of the land, but which are *separata tenementa*, being carried thereby unless specially enumerated. That many rights of an inferior nature as well as the lesser regalia, which are *partes fundi*, parts and pertinents of the land, are carried without enumeration by such a grant is undoubted (*e*), and therein consists one of the known qualities of a barony; but the right of salmon fishing is not included

(*b*) Stair 2. 3. 61; 2. 3. 76.

(*c*) A burgh is, to some effects, a *nomen universitatis* as well as a barony.

(*d*) Stair 2. 3. 60; Ersk. 2. 6. 18; Lord Barcaple in *D. of Sutherland* v. *Watson*, Jan. 1868, 6 Macph. 199, is of the opinion stated in the text; he considers that Stair is doubtful on the point. Mackenzie, in his *Institutions* (*lib.* 2. *tit.* 6), thinks that a grant of barony is of itself a sufficient title.

(*e*) *Innes* v. *Downie*, etc., 1807, Hume 552.

among these. The opinion of Stair, which seems to be expressed without hesitation in treating of the effects of a grant of barony, is somewhat modified when he comes to discuss the subject of salmon fishings separately. He says (2. 3. 69), that where lands are erected into a barony, or any other dignity, salmon fishing may be carried by the common clause *cum piscationibus;* but in the cases which he refers to in support of this opinion, the prescriptive possession seems to have been invariably required to fortify the title. Professor Bell, also (Prin. § 754) is of opinion that the right is not conferred by the mere erection of lands into a barony, though, as will be seen hereafter, the charter of a barony is a good title whereon to found prescription. In cases of doubt or difficulty, however, there might be held to be a presumption in favour of a holder of a barony title, which did not exist in the case of an ordinary vassal.

The sasine of a barony, to be held of a subject superior, was found in one case to include salmon fishing, though not specially mentioned; but the ground of judgment seems to have been, that the sasine bore the grantee to have been infeft in 'the haill fishings, as well upon the sea as fresh 'waters' (*f*).

A grant of lands which have originally formed part of a barony, together with *salmonum piscationes*, is of course a good title to salmon fishing; and it is effectual to exclude the owners of other lands which have originally formed part of the same barony, but who have received their lands without any express grant of salmon (*g*).

A grant of 'pertinents' does not include a right of salmon fishing. The established doctrine to this effect is not affected by the case of the *Duke of Queensberry* v. *Stormont* (*h*). The question there was not with the crown at all, but between

(*f*) *Campbell*, 1610, M. 14250.
(*g*) *Southesk* v. *Earlshall*, 1667, M. 10842.
(*h*) 1773, M. 14251.

two subjects as to a right of salmon fishing, which had been unquestionably given out by the crown to the subject superior, and feued by him to his vassal. In one of the renewals of the right, salmon fishing were not expressly mentioned in the dispositive clause, but the clause contained the word 'pertinents,' and the whole question really came to be whether that deed imported a new contract between the subject superior and the vassal, by which the salmon fishing which the vassal previously had were given up by him to the subject superior. It was held on principles which are quite familiar, and which do not in the least affect the rule above stated, that though the terms of the re-investiture were not the same, there was no sufficient indication of an intention to alter the character of the right conveyed. Where subjects are feued out *habili modo*, a purpose will not be presumed, in the mere renewal of the investiture, gratuitously to innovate, and unless it appears clearly that there is such a purpose, the right passes down as it was originally (*i*).

A conveyance of salmon fishing, to be effectual, must be contained in the dispositive clause of a charter; and no mention of salmon fishing, however distinct and explicit, in the *tenendas* clause only, will validly convey the right to a disponee (*k*). The right is in no way of the nature of a pertinent, and it is rights of this character only which can be conveyed by the *tenendas* clause of a charter. In very ancient times the *tenendas* clause of a charter was considered to have a much wider dispositive operation than would now be given to it. There have been several cases where rights of a valuable nature have been enjoyed under a conveyance in the *tenendas* clause only (*l*); but it is now clearly understood,

(*i*) Ersk. 2. 3. 23; *Lord Adv.* v. *Sinclair*, 1865, 3 Macph. 998, Lord Deas' opinion.

(*k*) In *Kelly* v. *Ramsay*, 1776, Hailes 722, Lord Covington says, 'The *tenendas* 'clause being the operation of the party himself and not of the Barons of Ex-'chequer (the granters), is not much regarded.'

(*l*) *Farquharson* v. *Aboyne*, 16 Nov. 1814, F. C. p. 10; 6 Paton, 380.

and the doctrine was clearly laid down in the case of *Farquharson*, that in regard to all matters conveyed in a charter, it is the dispositive and not the *tenendas* clause that must be looked at; and that if such matters are not included in the dispositive clause, or fall naturally under it as *pars ejusdem rei*, they are not carried to the disponee by being mentioned in the *tenendas* clause. A doubt was expressed by Lord Meadowbank, whether there could not be a grant of a separate subject by the *tenendas* clause of an ancient Scottish charter; and the Lord Chancellor Eldon, to a certain extent, evinced participation in that doubt, by remarking that 'he 'did not mean to say that in no case the gift of a subject in 'the *tenendas* will not enlarge the gift in the dispositive 'clause.' This opinion, however, cannot be considered as throwing any doubt upon the rule, that in estimating the amount of the right conveyed, the dispositive clause alone must be considered. It is no doubt true, that in the clause of *tenendas* it is customary to throw in a great many particulars which may or may not be in the dispositive, but the clause of *tenendas* will not render the right of the vassal wider than it is in the disposition. The rule seems to have been laid down, without hesitation, by all the authorities, and it is a rule which applies with special force to the subject of salmon fishing,—That if the property is a subject that cannot be carried by a clause of parts and pertinents, it is not one that can be carried by insertion in the *tenendas;* there must be dispositive words if it is not such a subject as will go as parts and pertinents. The general doctrine cannot be better stated than in the words of Professor Menzies, in his *Lectures on Conveyancing* (p. 527): 'Whatever does not fall under the description of part and pertinent, as a right of salmon fishing, or a subject beyond the 'limits of lands specially bounded, must be mentioned in the 'dispositive clause, in order to its being conveyed. It will 'be unavailing that anything intended to be conveyed is

'mentioned in other clauses, for these have not a transmit-
'ting power. It is the dispositive clause which ascertains
'and transmits the subjects to which the granter is to have
'right. None, therefore, are transmitted unless they are
'mentioned in it. Of this rule there is an illustration in the
'case of *The Earl of Aboyne*, 16th November 1814, when a
'party claimed a right of hunting over the property of
'another on the strength of the words *cum aucupationibus et*
'*venationibus*. These words, however, were not in the dis-
'positive words of his title, but in the *tenendas*, of which the
'office is not to transfer the right, but to describe the tenure
'by which it is held.' In the case of *Aboyne*, which was affirmed on appeal, an offer to prove possession of the right of hunting for upwards of forty years was held irrelevant, because it was only mentioned in the *tenendas* clause, and was incapable of being acquired as part and pertinent.

The presence of the word 'fishings,' in the *tenendas* clause of a charter, though of no dispositive power, may be quoted as a circumstance materially corroborative of other evidence of right (*m*).

The effect of a charter, with a mention of fishings in the *tenendas* clause only, as a foundation for a prescriptive title, will be considered hereafter (*n*).

A grant of salmon fishing entitles the grantee to exercise the right in any manner recognised by law, with the exception of cruives, which require an express grant of cruive fishing, or, at any rate, a grant followed by prescriptive possession of that particular method (*o*).

A grant from the crown of salmon fishing in a particular locality is not incompatible with a subsequent grant of fishing by another method in the same locality. For example,

(*m*) *Lord Advocate* v. *Sinclair*, 1865; 3 Macph. 997.
(*n*) *Vide infra*, p. 89.
(*o*) *Vide infra* v. *Cruives;* Bankton i. 575; *Heritors of Don*, 1665, M. 10840.

a right of cruive fishing may be granted to one individual, and a right of fishing by other methods may be subsequently granted to another (*p*).

A grant of salmon fishing implies only a right of fishing by the legal methods; and no crown charter or other conveyance, however express, will confer a right of fishing by a method which is illegal. A grant of salmon fishing to one who is not the proprietor of the adjacent land, implies a right to make use of the banks for purposes connected with the fishing. The extent of this implied right is discussed hereafter.

Where a right of fishing is granted in favour of the burgesses and community of a burgh, the Magistrates and Town Council of the burgh are the proper guardians and conservators of the right. They are the proper parties, not only to vindicate and defend these rights in questions with third parties, but also to regulate the exercise of them by the members of the community themselves, in such manner as may best conduce to the common benefit. The right may be considered as vested in them; and they have a title to sue or defend actions regarding them. Where the right of fishing is thus granted to the burgesses and community of the burgh, the Magistrates and Council are entitled to take possession of them, and let them out to tenants, that being the proper mode of turning the right to the best account for behoof of the burgesses and community. But in these circumstances it is advisable that the tenants should be selected from among the burgesses, and that the object should be rather to protect the fishings, by regulating the exercise of the right of fishing and the reasonable supply of the burgh with fish, than to obtain a large rent. The system of allowing the fishermen to take the matter into their own hands, without regulation or control by the Magistrates, does not appear to be the most judicious or advantageous for the general interest of the burgh.

(*p*) *Grant* v. *D. of Gordon*, 1778, M. 14297.

At the same time, in cases where it has been the practice to allow the public the unrestricted use of the fishings, a sudden and violent change might be imprudent, as liable to excite ill-feeling and meet with resistance. The Magistrates and Council should act so as to make it apparent, that any interference by them is only for the purpose of regulating the exercise of the right in such manner as to conduce to the preservation of the fishings, and the common interest of the whole community.

PRESCRIPTIVE TITLE.

Salmon fishing, like all heritable subjects, requires a written title. The written title, if not conveying *ipsis verbis* a complete right, may be fortified and explained by prescriptive possession; an original right from the crown being always presumed from prescription.

To establish a title to salmon fishing by prescription, the charter founded on must either expressly give the fishings in a particular river, or bestow a general grant of fishings; for without a *primâ facie* title, no length of possession will confer a right (*q*). The usual title, upon which prescription is grounded, is a charter conveying lands '*cum piscationibus*,' without express mention of salmon. This title, if followed by possession of salmon fishing for forty years, or for time immemorial, will constitute a complete title to salmon fishing (*r*). 'It is dubious,' says Stair, 'what can have been 'originally the meaning of the clause *cum piscationibus*, or of 'fishing in salt water, seeing there are common freedoms of 'every nation to fish in the sea, or in brooks or rivers for 'common fishes, and therefore needs no special concession 'from the king or other superior. In practice, however, the

(*q*) *Hunter* v. *Maule*, 1827, 5 S. 238. The question whether a grant of 'pertinents' is sufficient foundation for a prescriptive title is considered hereafter.

(*r*) Stair, 2. 3. 69; Ersk. 2. 6. 15; *Monimusk*, M. 10783; *Pool* v. *Dirom*, 9 July 1823, 2 S. 466.

'import of this clause has been, to confer upon the party in 'whose charter such a clause exists, a foundation for a title 'to the salmon fishing.'

The occurrence of the words '*cum piscibus*,' in the disponee's charter, is a good title to prescribe salmon fishing, and the phrase has been found effectual to confer on a grantee a title to prescribe a right of taking fishes out of every boat using his lands for anchorage or bait (*s*). The words, however, may be considered as practically of the same import as '*cum piscationibus*,' or '*cum piscariis*' (*t*). A grant of lands '*cum privilegio piscandi*,' is a sufficient title if followed by prescriptive possession of salmon fishing (*u*).

The prescriptive possession, in order to complete the right, must be connected with the titles upon which it proceeds. But where, by the recent titles of a proprietor, the lands are conveyed to him merely '*cum piscationibus*,' while the more ancient titles to the same estate mention the salmon fishings expressly, it is competent, in estimating the efficacy of the title, to refer to the older titles as explanatory of the nature of the right; and in cases where these stand as above mentioned, a sufficient right to the salmon fishing might perhaps be held to be established, without the necessity of proving possession (*x*). But if, subsequent to the date of the omission of the word 'salmon fishings' from the progress of titles, the right appear to have been granted to a third party, or if it appear, by the use of the salmon fishing on the part of the last holder of the express title, that he considered himself to have remained

(*s*) *Fotheringham*, 1687, 3 Brown's Supp. 639.

(*t*) In the old case of *Forbes* v. *Udney*, 1701, M. 14250 and 7812, a charter which bore only '*cum piscariis*' was sustained without prescription. It was argued that *piscaria* included all kinds of fishing, but there seem to have been other reasons for sustaining the title. The symbols of infeftment were boats, nets, etc., which are only applicable to salmon fishing.

(*u*) *Earl of Southesk* v. *Earlshall*, 1667, M. 10842. A grant of fishing with a yair, followed by prescriptive use of taking salmon therein, has been held to establish the right. *Graham* v. *Dixon*, 1816, 6 Paton's App. 163.

(*x*) *Earl of Dalhousie* v. *M'Inroy*, 1865, 3 Macph. 1168.

undivested of the right, then the case is different, and the right cannot be presumed of have been transmitted under the subsequent grants of 'the fishings.'

The mention of salmon fishing in the *tenendas* clause of a charter is not, as has been seen above, sufficient to convey the right. Salmon fishing being *inter regalia*, and not being included in the parts and pertinents of lands, must be mentioned in the dispositive clause in order to being carried by the grant. Neither will the mention of salmon fishing in the *tenendas* clause of a charter be of itself a sufficient title whereon to found prescriptive possession to the effect of completing the right (*y*). In the old case of *Fullerton* v. *Eglinton* (*z*), where a grant of barony with mention of fishings in the *tenendas* clause only, was held to be a good title for prescription, there can be little doubt that the decision proceeded upon the ground that the grant was one of barony, which is *nomen universitatis*, and of itself implies many of the lesser rights. The judgment was probably irrespective of the mention of fishings in the *tenendas* clause (*a*).

The erection of lands into a barony is not, as has been seen above, sufficient, without express mention, to convey a right of salmon fishing. But it forms of itself a good foundation for a prescriptive title (*b*). The erection of lands into any kind of dignity was considered as conferring a title to salmon fishing, which, without special mention in the charter, could be more easily converted into a complete title to salmon fishing by means of possession. In the case of *The Earl of Murray* (*c*), an infeftment of a sheriffship, and forty years'

(*y*) *Lord Advocate* v. *Sinclair*, 1865, 3 Macph. 987.

(*z*) *Fullerton* v. *Eglinton*, 1672, M. 10843.

(*a*) See also *Kelly* v. *Ramsay*, 1776; 5 Br. Supp. 445, where the learned reporter seems to think that a clause '*cum piscationibus*' occurring in the *tenendas* clause of a barony charter, though it would not be effectual even when followed by possession, to complete a title to oyster fishing, might yet do so in the case of salmon fishing, which, he thinks, may be considered as part of the barony and as *annexa fundo*.

(*b*) Ersk. 2. 6. 18; Bell's Prin. § 754; Bankton i. 574.

(*c*) 1677, M. 10903.

possession of three days' fishing yearly, was held to be a sufficient title to the salmon fishing, though the infeftments bore only emoluments in general (*d*). It has been said (*e*) that there is always a strong presumption that when lands with fishings are erected by the crown into a barony, fishings are to be construed as embracing salmon fishings. Lord Curriehill quotes Stair (2. 3. 61 & 69) in corroboration of this opinion; but the opinion of Stair in the first of these passages, though somewhat modified by the second, ascribes to a grant of barony a much greater importance than contended for by Lord Curriehill, for he considers that, without the necessity of any possession, a right of salmon fishing is conveyed thereby. If, on the other hand, it be admitted that a grant of barony is not sufficient to convey *eo ipso* a right to salmon fishing, it is unnecessary to ascribe any superior weight to a charter of barony as affording a presumption in favour of salmon fishing; for, if possession of salmon fishing be required to complete it, it occupies then precisely the same position, as a title for prescription, as an ordinary charter from a subject superior containing a clause '*cum piscationibus*.'

The charter of a barony will be equally effectual as a foundation for a prescriptive title, whether the words '*cum* '*piscationibus*' be mentioned, or if they be omitted; and in this respect a grant of barony may be considered (*f*) as differing from an ordinary disposition or charter from a subject superior, viewing them as titles whereon to found a prescriptive title to salmon fishing. A charter from a subject superior, by means of which a prescriptive title to salmon fishing is sought to be established, must contain at least the words '*cum* '*piscationibus*,' and this probably in the dispositive clause (*g*), because possession is effectual only to explain a grant, and

(*d*) See also *Brown* v. *Town of Kirkcudbright*, 1678, M. 10844.
(*e*) *Per* Lord Curriehill, *Lord Advocate* v. *Sinclair*, 1865, 3 Macph. 997.
(*f*) *Vide* Lord Deas' opinion in *Lord Advocate* v. *Sinclair*, 1865, 3 Macph. 981.
(*g*) See *ante*, p. 89.

not to originate a right. But a barony title will be effectual as a foundation for prescription, even though it contain no mention of *piscationes*, for fishings pass along with pertinents, to carry which without express mention, is one of the special characteristics of a grant of barony. But this distinction between a barony charter and a disposition from a subject superior, as a title for founding prescription, is somewhat modified by the decision of the majority of the Court in the case of the *Lord Advocate* v. *Sinclair* (21 June 1865, 3 Macph. 981), where, in an action by the crown against a subject, relative to salmon fishing in the sea *ex adverso* of the defender's lands, the defender pleaded a prescriptive title, the foundation of which was a sasine following on a disposition, with a double manner of holding, of lands, 'fishings,' and pertinents; and it was held, on a construction of the titles, that the defender, even assuming the 'fishings' not to have been included in any of the crown entries, had a bare right to 'fishings,' which was sufficient, having been followed by the requisite possession, to enable him to establish a prescriptive title to the salmon fishings in question; and that an entry with the crown, by charter of resignation and confirmation, to the lands and 'pertinents,' and containing no mention of fishings, excepting in the clause of *tenendas*, together with subsequent renewals of the investiture in similar terms, was to be construed as including salmon fishings. It will be observed, however, that this case cannot be considered as conclusively placing dispositions from subjects superior as altogether on the same footing with charters of barony, as titles for founding prescription, inasmuch as, in the case referred to, the word 'fishings' occurs in the original disposition founded on, and the salmon fishing had unquestionably, by the charter of 1606, been originally parted with by the crown (*h*).

(*h*) See also *Duke of Queensberry* v. *Stormont*, 1777, M. 14251. In this case also the original charter, though not one of barony, contained an express grant to 'the fishings.'

It being beyond doubt, as has been seen above, that the word 'pertinents' is not by itself a sufficient title to salmon fishing, the question arises, whether it will form a sufficient title whereon to found prescriptive possession of salmon fishing, and thus to constitute a perfect title. The authorities appear to be opposed to this view, and though the point seems never to have been raised in practice, an opinion has been expressed by Lord Deas (*i*) directly opposed to the validity of such a title. But the question may fairly be considered as not free from doubt, and the following reasoning might be adopted: A grant of 'fishings' is universally admitted to be a good title whereon to prescribe a right to salmon fishings: a grant of fishings is included in a grant of pertinents: therefore, *a fortiori*, should a grant of pertinents be a good title whereon to prescribe a right to salmon fishing.

Possession of salmon fishing for the prescriptive period is effectual, not only to elevate a grant of fishings into a right of salmon fishings, but also to validate and complete a title originally imperfect. If the charter, in which the clause '*cum piscationibus*' is contained, is intrinsically a good one, the possession serves to *explain* the grant; if the charter contain an express conveyance of salmon fishing, but be in itself defective, as proceeding *a non habente potestatem*, the possession serves to *perfect* the grant and to remedy the original defect, at least in a question with another vassal; though it may not be sufficient to do so as against the crown, if there be any evidence that it remains undivested of the right. But the title will be sufficient even against the crown, if there be evidence that the crown has originally parted with the right, and the defect of the prescriber's title exist only in the non-existence of the connecting links between the crown grant and the title upon which the prescription is founded.

Possession also may serve the double purpose of fortifying the title, and explaining the subject disponed. The

(*i*) *Lord Advocate* v. *Sinclair*, 1865; 3 Macph. 998. See also Ersk. 3. 7. 4.

kinds of possession which are necessary in the different cases will be afterwards considered (*k*).

The effect of a title by prescription is the same in salmon fishing as in every other case; it cuts off all grounds of preference, which, if insisted in before the expiration of the forty years, would have excluded the prescriber. A charter, for example, though granted *a non domino*, is a good title for prescription, so that if the title be a fair and genuine writing, and proper for the transmission of property, the possessor is, after the years of prescription, secure by the statute (1617, c. 12), which admits no ground of challenge except falsehood, the length of time standing in the place of all other requisites. From this rule may be deduced as a corollary, that a possessor, after he has acquired a subject by the positive prescription, cannot be affected by the alleged preference of any title in his competitor antecedent to the commencement of the prescription, any more than he can by the legal defects of the charter, or other title, on which his own right of prescription was grounded. If he and his authors have had such possession as the statute requires, during the whole course of forty years, he is fully secured against all disturbances upon pretence of antecedent titles, though they should be unquestionably preferable to his own (*l*). A prescriptive title consisting of a crown charter with a clause '*cum piscationibus*,' followed by forty years possession of salmon fishing, has been held to be a sufficient defence to an action of removing at the instance of a party who held an express grant of the same subjects (*m*).

(*k*) Possession, as will be explained hereafter, may have a third effect, namely, that of *defining* the extent of a grant.

(*l*) Ersk. 3. 7. 4; *Forbes* v. *Udney*, M. 7812; *Brown* v. *Town of Kirkcudbright*, M. 10844; *Ramsay* v. *Duke of Roxburghe*, 1848; 10 D. 661; *Lord Abercromby* v. *Lord Breadalbane*, 1843; 5 D. 1389.

(*m*) *Maxwell* v. *Portrach*, 1628, M. 10617. The decision is reported at M. 14250, directly to the contrary effect; but looking at the other decisions, it is thought that the former report must be regarded as correct.

And in another case it was decided that a charter from a subject superior, containing a general grant of fishings, followed by prescriptive possession of salmon fishing on the part of a vassal, was a good title as against the superior founding on a subsequent express grant of the salmon fishing from the crown (*n*).

Possession, which has existed from time immemorial, and of the commencement of which there is no trace, is presumed to go backwards so as to connect it with the titles of a more remote date, and that though the intermediate titles contain no mention of fishings (*o*). This doctrine was given effect to in the case referred to, for the more recent titles of the prescriber conveyed to him no right which could be completed by prescription; but possessions of this kind was recognised as attributable to a remote charter, in which the fishings were conveyed. The prescriber must of course connect himself by a regular progress of titles (though the intermediate titles may not contain any mention of fishings) with the original charter on which he proposes to found his possession. The title founded upon must be a charter and infeftment, but the titles by which the party who is founding on the prescriptive right connects himself with that charter and infeftment, are effectual, although they be personal rights, without renewals of the infeftment (*p*).

Possession, which has existed from time immemorial, and of the commencement of which there is no trace, besides being an element in prescription, will serve as an interpreter of written title. A case occurred in which it was held to have this effect before the statute of 1617 introduced the positive prescription (*q*).

(*n*) *Duke of Queensberry* v. *Lord Stormont*, 1773, M. 14251; *Littlejohn* v. *Straiton*, 1759; 2 Paton's App. 19.

(*o*) *Per* Lord Curriehill, *Lord Advocate* v. *Sinclair*, 1865, 3 Macph. 994.

(*p*) *Per* Lord Curriehill, p. 996, *ibid.* *Caitcheon* v. *Ramsay*, 1791, M. 10810; *Waddell* v. *Pollock*, 19 June 1828, 6 S. 999.

(*q*) *Campbell*, 1610, M. 14250.

Prescription as against the Crown.—In the acquisition of a title to salmon fishing, the positive prescription runs against the crown, and serves to exclude all interest in the sovereign, as well as the subjects. But in the negative prescription, the negligence of the officers of state cannot prejudice her Majesty's interests (*r*). The right of salmon fishing, though it be *inter regalia*, may be acquired by the positive prescription proceeding upon titles flowing from subjects; for the presumption, after the completion of the positive prescription, becomes incontrovertible,—it becomes a *presumptio juris et de jure*, that they were originally derived from the crown (*s*). By extending the operation of the positive prescription to the crown, the sovereign is unquestionably placed in a less advantageous position than the subject. A neighbouring proprietor, against whom the positive prescription is generally used, has opportunities for interrupting the possession which the crown from the nature of the case does not possess. In the case of an adjacent proprietor, the adverse possession is carried on under the very eyes of the person whom it is to affect, and thus possesses one of the qualities which is most essential to adverse possession; and which is wanting in the case of prescription against the crown. The representatives of the crown in this matter are the Lord Advocate and the Commissioners of Woods and Forests, who have no person on the spot to attend to the royal interests; and thus, especially in cases where the fishing is of little value, when it is in a remote locality, and where the adverse possession is of a limited character, the exercise of the right for the prescriptive period may easily escape their attention, and a title to the fishings may be completed. Possession may thus be carried on without any knowledge on the part of the crown, which, had they occupied the favourable position of a neighbouring proprietor, they would have immediately interrupted; and

(*r*) Bankton, 2. 12. 9. (*s*) *Brown* v. *Town of Kirkcudbright*, M. 10844.

thus it would appear, that in prescription against the crown, one of the essential requisites of that method of completing a title is awanting. These considerations, however, have been disregarded, and the principle may be considered as settled by various decisions (*t*), that in completing a title to salmon fishing, the positive prescription runs against the crown.

It was decided in *Stuart* v. *M'Barnet* (*u*), that a disposition of salmon fishing by one subject to another, with infeftment thereon, though the disponer held no title from the crown, forms a good prescriptive title to the disponee in a question with a subject; but a doubt has been expressed by Lord Deas in another case (*x*), whether it is valid to this effect in a question with the crown. It is of course important in such a question to remember that salmon fishings are *inter regalia*, and it may be argued that where there is no evidence of the crown having divested itself originally of the right, there is no ground for assuming that the disponer himself had any right to the fishings. If a disposition from a subject superior is to be recognized a good title for prescription, a title to salmon fishing may easily be reared up by a base disposition between members of a family perhaps, which, wherever the crown is negligent in looking after the possession, may be brought forward after forty years as a good title against the crown, although renewals of the investiture may have all along been accepted by the vassal in terms which *ex facie* left the crown's right to the salmon fishing entire. The point does not seem ever to have been expressly raised.

If the crown, by an original charter in favour of a subject, convey certain lands 'with the salmon fishings;' or, 'with 'the fishings;' and a subsequent resignation by the vassal in the same terms is made into the hands of the crown; and if

(*t*) *Lord Advocate* v. *Sinclair*, 1865; 3 Macph. 981.

(*u*) 1867, 5 Macph. 753; *Ramsay* v. *Duke of Roxburghe*, 1848; 10 D. 671.

(*x*) *Lord Advocate* v. *Sinclair*, 1865; 3 Macph. 1003.

the crown, in later grants, convey the same lands, but in terms which contain no mention of the salmon fishing or the fishings, the right will be presumed to remain with the crown, and such a series of titles will form no valid foundation whereon the vassal may prescribe the right. But the possession following thereon may be of such a character, it may have existed from time immemorial, and the commencement of it may be so remote, that in the absence of any express resignation or retrocession, it may be presumed to go backwards, so as to connect it with the titles of a more remote date.

Possession must be attributable to grant.—As no amount of possession is sufficient, without a written title, the written title must be clearly the foundation of the possession which is pleaded; and the right will not be perfected, if the possession is attributable to any other source. Where a party had obtained a lease of certain salmon fishings, which he thereafter possessed for more than forty years without paying the tack duty, and a competitor having produced an express title to the fishings, the tenant in possession was not allowed to found upon an old charter—prior to taking the lease and containing a general grant of fishings—as proving, combined with the possession, a right to the salmon fishing, excluding the express grant of the pursuer, who stood in right of the party from whom the defender had obtained the lease and consequent possession. The possession was only allowed to be ascribed to the lease, and was therefore ineffectual to complete the proprietary right (*z*).

Requisites of Possession.—The general rule regarding the kind of possession which is necessary to elevate a right of fishing on a title '*cum piscationibus*' into a complete title to salmon fishing, is—(1.) That the fishing be by means of net

(*z*) *Carnegie* v. *Magistrates of Montrose*, 1777, M. 10611.

and coble (*a*), or by some other equally palpable and unequivocal method; (2.) that the right be exercised with some degree of frequency for the whole of the prescriptive period; (3.) that it be generally used over the whole extent of water claimed; (4.) that it be exclusive; (5.) that the mode of exercising the right be one recognised by law; and (6.) that the possession be by the person claiming the right, by those in his right, or by his authors and predecessors.

Method of Possession.—With regard to the method of fishing used, the general rule, subject perhaps to certain modifications, is, that it must be by means of net and coble, or some other legal method (other than rod or spear) which possesses the requisites above stated, and which is sufficiently palpable and pronounced to be considered as a public assertion of the right. An essential requisite of possession being a clear and indisputable character, it is a fixed principle that fishing by means of rod and line, being of an equivocal nature, does not sufficiently fulfil the requirements. The rationale of the rule is this,—the use of rod and line does not, from the nature of it, necessarily imply the exercise of salmon fishing; in waters which are frequented by both species of fish it may be exercised merely in exercise of a right of trout fishing; and especially when the smaller fish of the salmon kind are fished for, it would be impossible from the tackle and apparatus of the angler to decide which species he desired to capture; whereas the use of net and coble implies by its nature the intention of killing salmon, and is never used for any other species of fish (*b*). Though the

(*a*) *Duke of Sutherland* v. *Ross*, 11 June 1836, 14 S. 960; *Anderson* v. *Anderson*, H. C., 25 Nov. 1867, Sc. Law Rep. vol. v. p. 58; *Milne* v. *Smith*, 23 Nov. 1850, 13 D. 112; *Ramsay* v. *Duke of Roxburghe*, 9 Feb. 1848, 10 D. 661, Lord Medwyn's opinion; *Lord Abercromby* v. *Lord Breadalbane*, 18 July 1843, 5 D. 1389.

(*b*) There may be possession by means of net fishing, which is nevertheless insufficient by reason of its equivocal character. The use of a coble is probably not essential, but the net must be substantially a salmon net, and used for the purpose of taking salmon.

rule is as above stated, with regard to the use of net and coble, it does not appear to be absolutely necessary that every pool, where the use of net and coble is possible, should be fished in this manner; for if this rule were rigidly enforced, it would be necessary, in the case of deep and wide streams, to prove that every inch of the water where the salmon lay was uniformly swept with the net. It will be sufficient to prove that the use of this mode of fishing is general in point of extent, and usual in point of time, and that it is exercised not merely with the object of establishing a right, but for purposes of profit or convenience, and in accordance with usual custom.

An essential requisite of possession is that that should be an open and prominent assertion of the right (*c*); that it should be carried on publicly and in the day time; that the operations should constitute an effective means of taking salmon, and that they should be known by, or at least not concealed from, the inhabitants of the district (*d*).

That these requisites have been generally in the decisions held to be fulfilled only by the method know as net and coble, is undeniable; but it can scarcely be doubted that there exist other appliances possessing all the necessary qualifications in an equal degree, and which would be held as equally effective to constitute legal possession (*e*). The progress of

(*c*) *Forbes* v. *Udney*, 1701, M. 7812. In establishing a right of salmon fishing as against the proprietor of the adjacent land, the taking possession of the bank and making it subservient to the purposes of fishing, seems to be the leading and most important characteristic. *Ramsay* v. *Duke of Roxburghe*, 9 Feb. 1848, 10 D. 661.

The granting of a lease of the fishery, if it be followed by exercise of the right on the part of the tenant, is a circumstance of great importance in proof of possession.

(*d*) 'The duration of the possession is the period afforded to all who may pre-'tend to a prior right, for interruption; and therefore the acts of possession which 'ought to have been interrupted to save the claim, are only those that are palpable 'to the world as a possession of the right in question.' *Napier on Prescription*, p. 108.

(*e*) In the case of *Lovat* v. *Macdonell*, 1867 (Outer House, not reported), Lord Kinloch decided that prescriptive possession by means of a scringe net was sufficient. A scringe net is almost similar to the ordinary net and coble, except that no boat is used. In the case referred to, the river did not admit of the use of net and coble.

science, or the experience of fishermen may, and probably will, suggest some appliances entirely new, or some improvement of the present method, by which the capture of the salmon may be effected more economically and more efficaciously than at present, and it can scarcely be doubted that these improved methods, provided they be recognised as legal, and provided they be open, unequivocal, and unchallenged, and provided they possess in an equal degree with net and coble the legal requisites of possession, will be recognised as *habile* methods of perfecting a right to salmon fishing.

Prescriptive Title to Rod Fishing.—The case of *The Duke of Sutherland* v. *Ross* (*f*) decided, not only that prescriptive possession of rod fishing is ineffectual to elevate a general title into a complete right of salmon fishing, but also that it is ineffectual to establish a right even of rod fishing, and that a right of rod fishing is not capable of being erected into a separate property. That case referred to a river where net fishing is practicable and usual, and undoubtedly the judgment was partly grounded on the fact, that the method of fishing used was not the highest kind which was practicable in the circumstances. The question, perhaps, may still be considered an open one, whether in a river where fishing by means of net and coble is impracticable from the nature of the subject, rod fishing would not be considered effectual to fortify and complete a general title. In the circumstances supposed (and in many valuable salmon rivers they frequently occur), the rapidity of the current, the narrowness of the channel, and the rocky nature of the bed, make net fishing impossible, and the only profitable mode of fishing is by rod and line. In such a case, is it to be maintained that the holder of a general title, following it up by an open and persistent use for the prescriptive period of the only method of fishing which the

(*f*) 11 June 1836, 14 S. 960.

circumstances permit, is precluded from completing his title? In such waters can a right never be acquired? and is a valuable property, to which no other party can show the shadow of a title, to be forever incapable of appropriation by the person who holds a general title to the fishings, and who has, for time immemorial, exercised the exclusive right of taking salmon? Is an imperfect title in such cases incapable of being completed, simply because the mode of fishing applicable to the waters does not answer a particular description, though, at the same time, it may be one far more valuable? The question seems never to have arisen in a direct form, and the dicta with reference to it, which can be collected from the authorities, are of varying import. In the case of *Stuart* v. *M'Barnet* (*g*), which advances farthest the argument in favour of the validity, in such circumstances, of this kind of possession, Lord Deas admitted, that in questions of prescription, 'the character of the place and the nature of the fishing 'must be considered.'

In that case express reservation was made of the question as to 'the necessity of fishing by net and coble in all cases; 'for example, where it is almost impossible to fish in that 'way.' It was decided, however, that where a river, from the nature of the channel, cannot be fished by net and coble, or where that mode of fishing is practicable over only a limited portion, in that case possession by net and coble, in the parts where that method is practicable, and by rod fishing over the other parts of the stream, will be sufficient to complete the prescriber's title over the whole extent—possibly not against the crown, but at all events against an opposite proprietor, who claims the whole, but whose grant extends only to one bank. It is essential to observe, however, that the prescriber held an express grant of salmon fishing, though it proceeded only from a subject superior, and that the prescriptive exercise of rod fishing was only found effec-

(*g*) 30 Mar. 1867, 5 Macph. 753.

tual for the purpose of fortifying the base title, and not to the effect of explaining the grant. Possession of this kind will entitle the prescriber to a declarator of right to fish on his own side, though it may not be sufficient to establish in him a sole or exclusive right. The question of the crown's right as against such a possessory title, was expressly reserved; for it is almost unnecessary to say, that any decision in a question of right between two subjects cannot affect the right of the crown, whatever that may be. In the particular case referred to, the river over which the right of salmon fishing was claimed, was about a mile in length, and the portion which had been fished by net and coble extended only to five or six hundred yards. This decision, it will be observed, adds little or no weight to the argument, that rod fishing can, in any circumstances, be effectual as explaining a grant of fishings into a right to salmon fishing; but it undoubtedly attributes to that kind of possession an effect which has never before been accorded to it, the right having been viewed hitherto as *res meræ facultatis*, and the exercise of it having been regarded in previous decisions as of no effect whatever in constituting a legal right to salmon fishing. The remaining authorities which affect the question seem still to leave it in an unsatisfactory position. In the case of *Lord Dalhousie* v. *M'Inroy* (*h*), it was held that where a river is not suited for fishing by net and coble, the exercise of the right by means of rod, and by a scum net, is sufficient possession to explain a general grant. The point was here a subsidiary one, and the judgment of the Lord Ordinary was not submitted to review. In the case of *Lord Abercromby* v. *Lord Breadalbane* (*i*), prescriptive possession by means of rod and spear was alleged; and it was maintained that such possession was sufficient to complete a title, because the nature of the river did not admit of any other. The Lord Ordinary (Cockburn) was of opinion that such possession was ineffec-

(*h*) 20 July 1865, 3 Macph. 1168. (*i*) 18 July 1843, 5 D. 1389.

tual, even in places where net and coble could not be used; but in the Inner House, though the point was not expressly decided, a contrary opinion was indicated by Lord Medwyn. In various other cases (*k*) possession by rod and spear was found insufficient to establish a right; but in those which are referred to, a higher kind of possession seems to have been possible; but in the case of *Chisholm* v. *Fraser* (*l*), net fishing seems to have been impracticable, and yet prescriptive possession by rod and spear was rejected, as a means of validating a general title '*cum piscationibus.*' The dicta are various and conflicting. If the point were raised, the Court might possibly consider rod fishing, in any kind of river, too equivocal and ambiguous a manner of possession to be accounted a habile method of constituting prescription; but, on the other hand, it is to be hoped that the awkwardness of deciding that in such circumstances a prescriptive title can never be acquired, may be avoided, by recognizing the principle that the best kind of possession which is possible in the circumstances, will satisfy the requirements of the law in completing a title.

Rod fishing as a means of fortifying a defective Title.—Rod fishing, however, though ineffectual (at least in large rivers), to explain a general grant of fishings into a right of salmon fishing, is, in certain circumstances, sufficient to complete a title otherwise imperfect; in other words, it may fortify, though it cannot explain, a grant; the kind of possession which is required to explain an ambiguous title, not being identical with the possession necessary to validate a title orginally defective.

A grant of salmon fishing, even from a subject superior,—and such a title is frequently the best that a proprietor can

(*k*) *Forbes* v. *Udney*, 1701, M. 7812; *Fraser* v. *Heritors of Ness*, 1765 (not reported); *Leith* v. *Heritors of Don*, 1773 (not reported); *Sir J. Colquhoun* v. *Smollett*, 1779 (not reported).

(*l*) *Chisholm* v. *Fraser*, Dict. App. i. *voce* 'Salmon Fishing.'

produce, either from the original crown charter being lost, or from the circumstance, that the grant has in fact originally proceeded from a subject,—may by possession be reared into a perfect right. If the title from the subject superior convey a right merely '*cum piscationibus*,' or 'to the fishings,' possession by net and coble will be necessary, both to *validate* the right as coming from one *non habente potestatem*, and to *explain* the right, as one of salmon fishing. But if the title from the subject superior convey a right to the 'salmon fishing' expressly, then the effect of possession is to validate the grant as coming *a non habente potestatem;* but possession is not required for the purpose of *explaining* the grant, for the expressions used in the deed preclude any doubt as to the character of the right disponed. It has been expressly decided, that the possession following upon a grant of 'salmon fishings' from a subject superior need not be, by net and coble, but that rod fishing, at any rate,—in a stream where that method alone was practicable,—is sufficient to complete the title (*m*). The strict rules, as to the necessity of the possession being by means of net and coble, do not apply to a case where an express (though base) title exists; the use of possession being there, merely to show that the grantee is acting upon the right conveyed to him, that he avows and proclaims to all whom it may concern, that the right exists in him; the *character* of the possession being unimportant, inasmuch as it is not required for the purpose of explaining the nature of the right. In the case of *Stuart* v. *M'Barnet*, a portion of the river, namely, a third, could profitably be fished by net and coble: the defender, whose claim stood upon a prescriptive title, proved no exercise of the right over this portion; but his exercise of the right over the rest of the river by rod and line, proceeding upon a grant of 'salmon fishings' from a subject superior, was found sufficient, if not to exclude the

(*m*) *Stuart* v. *M'Barnet*, 30 March 1867; 5 Macph. 753.

crown, at any rate, sufficient to constitute a good defence against a party who had a right to the salmon fishing on the opposite bank only, and who sought to interdict the defender from fishing with rod and line.

Extent of Possession.—With regard to the *extent* and amount of possession which is necessary, the rule is, that the right be used generally over the whole extent of water claimed, and that there be a certain degree of frequency in the exercise. The nature of the fishing and the character of the place will be considered. It is not necessary to have constant and continuous possession during the years of prescription, but it is sufficient that there be such possession as indicates the keeping up and assertion of the right from time to time during that period (*n*). It is not absolutely necessary that every pool, where it is possible, should be fished with net and coble; for if this rule were rigidly enforced, it would be necessary, in deep and wide streams, to prove that every inch of the water, where the salmon lay, was uniformly swept with the net. It will be sufficient to prove that the exercise is general in point of extent, and usual in point of time, and that it is exercised not merely with the object of establishing a right, but for the purposes of profit or sport, and in accordance with usual custom.

In framing an issue of possession, it is not necessary to insert the word 'continuous.' (*o*) The word 'exclusive,'

(*n*) *Stuart* v. *M'Barnet*, 30 March 1767; 5 Macph. 763; *Dalhousie* v. *M'Inroy*, 20 July 1865; 3 Macph. 1168.

(*o*) In *Mackenzie* v. *Davidson*, 27 February 1841; 3 D. 646, Lord Moncreiff observed, 'I do not think that it much signifies whether the word "continuous" is 'inserted in the alternative issue or not. I believe it is not usual. Forty years 'possession implies "without interruption." I should have thought "immediately" 'right, but probably the case of *Mercer* v. *Reid* (1 February 1840; 2 D. 520) 'decides against it. I have had doubts whether the mode of fishing should be in-'serted; but I rather think it is sufficient without that. It will be implied in the 'words, that it must be fishing by a mode which is in law sufficient to make pre-'scriptive possession.' In *Ramsay* v. *Duke of Roxburghe*, 9 Feb. 1848; 10 D. 661, it was laid down that the best form of words for an issue of prescriptive pos-

though perhaps not essential, may properly be introduced (*p*). A common right of fishing over the same subject is almost unknown in practice; though sometimes, in rivers where the fishings on the opposite bank belongs to a separate grantee, and the same water is dragged by the nets of both parties alternately, it may be sufficient to prove possession of the fishings, though, in this sense, it is not exclusive. It is not necessary to insert the word 'immediately' in the issue before the date at which the prescriptive period is said to have elapsed.

Legal character of Possession.—Possession, in order to be effectual to complete a prescriptive title, must be by fishing in a legal manner, and no possession, however long, will serve to interpret a title or constitute a privilege, contrary to the established law (*q*). The import of the decisions is to this effect; but it seems somewhat questionable in principle to deny to possession, open, unequivocal, and unquestioned, its ordinary efficacy, on account of the circumstance, that it has proved, on investigation, to be unrecognised by law. The use of possession, following upon a general title, is to show

session were those used in the Act 1617, c. 12. The following is the simplest form of Issue,—'It being admitted that the pursuer is proprietor of the lands of ——— '"*cum piscationibus.*'"

'Whether, for forty years and upwards, or for time immemorial, prior to 'the day of 18 , the pursuer, and his predecessors, and authors, pro-'prietors of the said lands, have fished for salmon *ex adverso* his said lands?'

(*p*) *Lindsay and Long* v. *Robertson*, etc., 29 May 1868, Sc. Law Reporter, vol. v.; *Dempster*, 1863 (not reported).

(*q*) *Ramsay* v. *Duke of Roxburghe*, 9 Feb. 1848, 10 D. 670, Lord Medwyn's opinion; 7 Bell's App. 248. The decision in that case is not inconsistent with, but supports this rule, for the method of fishing by cairn nets, which was there found to be an effectual kind of possession, was held to be legal on the Tweed, though it was illegal on the other rivers of Scotland. In *Mackenzie* v. *Renton*, 12 June 1840, 2 D. 1078, a party infeft under a crown charter in a barony, '*una cum salmonum* '*piscationibus de lie yairs de Alcaks*,' offered proof of immemorial possession by means of yairs; it having been found, however, by verdict of a jury, that the yairs were placed in situations prohibited by statute, the Court determined that as the fishing was thus carried on in violation of statute, and was therefore illegal, no length of possession could give a good prescriptive right. *Sir J. Colquhoun* v. *Magistrates of Dumbarton*, 1793, M. 12827; 4 Paton 221.

that the possessor believes himself to have a right, and the legality or otherwise of the method, so long as it has continued to be exercised in an open and unquestioned manner for forty years, does not seem to have any bearing on its efficacy for that purpose. We have seen that possession by rod or spear is ineffectual to complete a title, not because of the illegality of those methods of possession, but because of their not being sufficiently large and wide in their character, —but supposing that the possession has been by a method, which, though illegal by statute, is nevertheless sufficiently ample in its character as to be an open and unmistakeable assertion of right, and to preclude the idea of its being no possession at all, and the very destructiveness and wideness of which, is probably the reason of its illegality. Such possession may be illegal, and may be put an end to in proceedings properly constituted for that purpose, but it may be said that, until so interrupted, the party is entitled to continue the possession and to draw every advantage which may be consequent upon the fact of its subsistence. It may be said that the illegality may be pleaded to prevent the continuance of that particular mode of possession, but yet that its past exercise may constitute such a possession as will give the party a right to declarator of a title, to be enjoyed in the future by some other legal mode.

Extent of Right acquired by Possession.—Possession is only effectual to confer a right of the same kind as has been exercised. Prescriptive possession, for example, of fishing by means of net and coble, will not confer a right of fishing by cruives. Nor will a custom established by prescription, of fishing within the waters of another by means of net and coble,—that is, of extending the sweep of the net beyond the *medium filum*,—confer a right of transgressing the boundary line in the same manner when fishing with the rod and line. It will not do so, at least, if there be room for casting the line

within the boundary (*r*). A custom established in relation to one mode of fishing will not support a similar custom in relation to another mode. A usage which may be essential to the full enjoyment of the right in one case, may, in the other, amount to a mere trespass or invasion of the right of the opposite proprietor. But the prescriptive exercise of the highest method, following upon a general title, will be effectual to confer a right to the use of the lower methods; exercise, for example, of fishing by net and coble, will be effectual to include rod fishing. It is perhaps doubtful if cruive fishing, carried on as it is at an isolated spot, is a kind of possession effectual to confer a right of net fishing, which is carried on over the whole extent of the water (*s*). The prescriptive exercise of rod fishing only is, as we have seen, ineffectual to complete a right even to that extent; this being an exception to the rule of *tantum prescriptum quantum possessum.*

The same rule of *tantum prescriptum quantum possessum* applies to the extent of water over which the right of fishing is established. Possession is thus effectual for a third purpose, besides that of *explaining* and *fortifying* a grant; it may serve to *define* the extent of the subject granted, if that be otherwise indefinite; but it will not be effectual to extend the right beyond the limits expressly mentioned in the grant (*t*). Where the charter is a bounding one, no amount of possession will serve to extend the right beyond the limits defined. This rule applies not only to an attempt to extend the right to the opposite bank, where one only is granted, but also to a claim to extend the right to waters *ex adverso* of other lands than those comprised in the claimant's titles (*u*); unless this extended possession be clearly attributable to the

(*r*) *Milne* v. *Smith*, 23 Nov. 1850, 13 D. 112. (*s*) See *Cruives*, *infra.*

(*t*) *Richardson* v. *Hay*, 12 Mar. 1862, 24 D. 775; *Town of Perth* v. *Lord Gray*, 1750, M. 12792; *Milne* v. *Smith*, 23 Nov. 1850, 13 D. 112.

(*u*) Lord Deas' opinion in *Richardson* v *Hay*, *ut supra.* Of course the right of fishing may extend beyond the claimant's own lands to the waters *ex adverso* the lands of another, if that be specially conveyed. See *infra.*

titles of the claimant. Although a title founded on prescriptive possession can extend no farther than the possession, the circumstances of the case will be considered in determining what extent of possession is necessary.

Where there is no competing possession, and where the titles founded on define with tolerable accuracy the geographical limits between which the right is claimed, a limited and not very continuous possession may be admitted as sufficient; for example, where the lands conveyed form a barony, exercise of salmon fishing over the whole extent of sea-shore bounding the barony will not be required, but exercise over a portion of it will be held as applying to the whole (*v*). But, on the other hand, where there is competing possession, or where the possession is relied on to define the limits, the possession will of course require to be more marked—the right must be more frequently exercised, and must extend over the whole of the locality claimed.

Again, a right of fishing, of a limited description, but over a well defined locality, may be sought to be established, and the titles founded on may possibly warrant a claim to this extent, but no farther. A party may, for instance, possess a right of salmon fishing over a piece of water in which the right is common to certain other proprietors, and if possession is relied on to determine the extent of his right, it will be sustained to no farther extent than is warranted by the possession. For example, in an old case (*x*), a custom of fishing by one boat was established, and this possession was held to be insufficient to establish a right of fishing by two boats.

Though possession, when used as a means of defining the extent of a right of salmon fishing, is usually pleaded as a means of *extending* the limits wherein it may be exercised, it may sometimes have the effect of *restricting* them, at least if

(*v*) *Lord Advocate* v. *Earl of Seafield*, 17 May 1866, Outer House, not reported.

(*x*) *Brown* v. *The Town of Kirkcudbright*, 1678, M. 10844.

the possession, following upon a grant undefined in its limits, do not extend so far geographically as the grant might warrant, the completed right will be held as limited to the extent possessed. In the case of the *Earl of Fife* v. *The Magistrates of Banff* (*y*), a party having an undefined right of salmon fishing from a burgh, and having only exercised the right to the eastward of the burgh, was found to have no right to prevent the granter from exercising the right to the westward, along a portion of the coast expressly included in the burgh titles. This decision does not affect the rule, that a right of salmon fishing properly constituted, can not be lost *non utendo;* the right to the westward of the burgh had not been expressly included in the granter's title, for if it had been so, it could not have been lost by disuse.

Duration of Possession.—Possession, in order to complete a prescriptive title, must continue for forty years, or for time immemorial. It is not necessary that the proof be extended to the full period of forty years, if the usage be proved to be immemorial, or if no usage to the contrary be proved. A right of salmon fishing can only be explained as extending beyond the lands with which it is connected in the crown grant, by proof of possession for forty years or time immemorial, and proof to this extent will be required whether there be a complete title or not. A contrary opinion has, however, been expressed, to the effect that inasmuch as the possession necessary to explain an ambiguous title need not be identical with the possession necessary to extend a title originally defective, so a title which has no adverse possession to compete with it may satisfactorily be explained by a possession for something less than the forty years of prescription which is necessary as against a competing title.

A right of salmon fishing conveyed by a sufficient title

(*y*) 27 Nov. 1829, 8 S. and D. 137. See also *Magistrates of Inverness* v. *Duff*, 1775, M. 14257.

cannot be lost *non utendo*. If the grant proceed from a subject superior, and not from the crown, possession will be necessary to fortify the grant as against the crown; but in a question with a third party a base title (if express) is sufficient, and the right thereby granted cannot be lost by disuse (*z*).

By whom to be exercised—Possession, to be effectual, must be by the person claiming the right, by those in his right, or by his authors and predecessors (*a*). If the grant be in favour of a burgh, or to the town council of a burgh, and if the burgh charters include only a general grant of fishings, prescriptive possession of salmon fishing will of course be necessary to complete their right. If possession of this nature have been enjoyed by the fishermen of the burgh, even though holding no express authority or leave from the magistrates, but simply as members of the burghal community, that possession, unless circumstances indicate that it has been merely promiscuous, must be regarded as having been with their sanction. It must be attributed to the burgh charters, unless the facts are clearly opposed to such a construction, and will be effectual to complete the burgh right.

EXTENT AND LIMITS OF RIGHT.

The extent, geographically, of a right of salmon fishing, where there is a definition of it in the grant, is of course regulated by the terms used; and, the right being a valuable one, the terms will be construed with the utmost strictness (*b*). The right is sometimes granted along with the adjacent lands, and may be co-terminous with them; or may extend to the waters *ex adverso* the lands of another; or it may be wholly disjoined from the adjacent lands, and may be held by a person who has no connection with the property on either bank (*c*). All

(*z*) *Stuart* v. *M'Barnet*, 30 Mar. 1867, 5 Macph. 753.
(*a*) *Lord Zetland* v. *Glovers of Perth*, 31 Jan. 1868, 6 Macph. 292.
(*b*) *Sinclair* v. *Murray*, 1770, M. 14277.
(*c*) *Forbes* v. *Monimusk*, 1623, M. 10840.

rights of fishing, including salmon fishing both in the sea and in rivers, must yield to the more important rights of navigation and commerce; but these supereminent rights must be exercised *sine æmulatione vicini* (*d*).

A right of salmon fishing may be conveyed by a proprietor under reservation to himself of a right of fishing in a particular manner, for example, by the rod. Such a reserved right is, properly speaking, an heritable right,—personal privileges connected in perpetuity with an heritable estate being unknown in the law of Scotland. The reserved right will be construed strictly according to the terms used; and if the reservation be in favour 'of the proprietor of the estate and 'his successors in the said lands,' the privilege will be confined to the proprietor for the time being, and he will not be entitled to delegate or communicate it to any other person (*e*). A less limited interpretation would probably be placed upon the reservation if the terms of it are less restrictive, and even such a clause as is mentioned above might be interpreted, in the light of prescriptive usage, as extending the reserved right to persons angling with the authority of the proprietor.

Where the terms of a grant leave room for doubt as to the extent conveyed, rules of construction must be sought for in the authorities. A grant of salmon fishing in the sea extends, in connection with the land, not more than three miles, or a cannon shot, from the shore, for beyond that distance it is the common right of nations to fish (*f*) for all kinds of fish whatsoever. A grant of salmon fishing in a large river, supposing its limits up and down stream to be defined, may extend to the whole width of the river, and may include the right of fishing from either bank, or it may may be limited to half of the stream, or to the right of fishing only from one bank. The terms of the grant must, as far as possible, be relied on,

(*d*) *Brodie* v. *Cadell*, 1707, Brown's Supp. iv. 660.

(*e*) *Duke of Richmond* v. *Duff*, 25 Jan. 1867, 5 Macph. 310.

(*f*) *Gammell* v. *Commissioners of Woods, etc.*, 1859, *per* Lord Wensleydale, 3 Macq. 465.

and upon these it depends whether or not the grant is exclusive of future grants in that part of the river, to the salmon fishing from the opposite bank. The usual form of limiting the right to one side only of the river, is to convey the fishings with the powers of drawing nets on that bank, and this expression will be held as not precluding the granter from making a subsequent grant of the fishings from the opposite bank. A grant of the salmon fishings in a river, or in a particular part of a river, without limiting the grantee as to the drawing of his nets, is held to convey the whole fishings, and to imply a right of drawing the nets on either bank; but it is not held effectual, even though followed by prescriptive use of both banks, to exclude the holder of a subsequent grant, whose lands lie on the opposite bank (*g*). A grant of the salmon fishing in a river without limitation of drawing nets, is thus effectual to convey the exclusive use of the whole river, only in the absence of a competing grant of fishings from the opposite bank. In the case of *The Town of Perth* v. *Lord Gray*, the pursuers held not merely one bank, with a general right of salmon fishing in the river, but they had a grant from the crown of an island in the middle, with a right of salmon fishing in the waters surrounding it. They had exercised for time immemorial the right of fishing over the whole width of the channel, but the House of Lords held that neither the title nor the possession were sufficient

(*g*) *The Magistrates of Perth* v. *Lord Gray*, 1750, M. 12792; 1 Kilkerran's Rep. 499; 1 Craigie and Stewart's App. 645; *Richardson* v. *Hay*, 12 March 1862; 24 D. 775. But see *M'Inroy* v. *Duke of Athole*, 11 June 1858, 20 D. 1106, where a vassal acquired from his superior the salmon fishing in a river 'as far as his (the 'vassal's) lands extend.' The vassal's lands lay, in one part, on both banks of the river, and in another part, only on one bank. He had, undoubtedly, an exclusive right of salmon fishing where his lands lay on both sides, but had he an exclusive right where his lands lay only on one side, the opposite bank being the property of his author and superior? It was decided, that in the absence of exclusive possession by the vassal of fishing on both banks, his right was limited to the one, and that the superior must be held not to have divested himself of the right of fishing on the other.

to exclude the right of a subsequent grantee, who had not even exercised his right of salmon fishing. Neither would such a title serve to exclude the proprietor of the opposite bank, who held a general grant of fishings connected with the lands, if he had been able, by prescriptive use of taking salmon, to establish a title to salmon fishing.

An express grant of salmon fishing over the whole limits of a bay or river, within specified bounds, confers a right of fishing *ex adverso* the lands of another, without prescriptive possession of so fishing, 'it being undoubted law that such a 'title would extend over the whole bounds comprehended un-'less stopped by some adverse right, either *express* of salmon 'fishing derived from the crown, or *prescriptive* by possession 'on a title of fishing' (*h*). But where the charter conveys the right of salmon fishing in the river or bay generally, without describing the boundaries, prescriptive possession would be necessary to extend the right to portions of the water where it came into competition with adverse prescriptive claims.

If the proprietor of land on one bank of a river hold an express title to the salmon fishing on that side only, and if there be no competing grant on the opposite bank, it may be considered doubtful if the prescriptive use of the salmon fishing on both banks will be sufficient to establish the right as against the crown. If the affirmative were held, it would be allowing to prescription an efficacy of the highest kind; for, the salmon fishing on one bank remaining *ex hypothesi* in the crown, it would be allowing to prescriptive use not merely the power of defining the extent of a grant, but of acquiring property to which the prescriber has no written title. Prescription may serve to define the extent of a right when the limits it defines are not in competition with the express titles of another, but it can never serve to denude the holder of an earlier title of the rights which are expressly

(*h*) *Mackenzie* v. *Davidson*, 27 Feb. 1841, 3 D. 646.

contained therein. A case, however, is mentioned by Stair (*i*) where, as he says, prescriptive possession was found to give right to a salmon fishing upon both sides of the water and drawing nets upon both banks, though the infeftment bore only fishing upon one side. It does not appear whether, in that case, there was a competing grant of salmon fishing on the opposite bank; but if there was so, and if the right which was accorded of using the opposite bank was a right which excluded a subsequent grantee of that bank, the decision is overruled by the judgment of the House of Lords in *The Town of Perth* v. *Lord Gray*; if, on the other hand, there was no competing grant to a subject, the right of salmon fishing from the opposite bank must have remained in the crown; and being in the person of the crown, must be considered not less effectual in a competition than if it had been transmitted to a subject. The right which was accorded in the case of *Monymusk* v. *Forbes*, of drawing nets upon the opposite bank, may possibly have been only one to be used in common with the grantee of the salmon fishing on that bank. The decision, considering the inconsistency of the reports, is not one of indubitable authority; it is, at any rate, the only one where prescription has been found effectual to extend the right beyond the limits expressly named by the charter.

If a right of salmon fishing be granted conjointly and in connection with the lands on one bank,—for example, if, as

(*i*) Stair, 2. 3. 69, *Lord Monymusk* v. *Forbes*, 1623, M. 10840. The same case, however, is reported quite differently at M. 14264. See also observations of the Lord President in *Richardson* v. *Hay*, 12 March 1862; 24 D. 775, which indicate, that usage might extend a right of salmon fishing connected with one bank to the other side of the river. This was *obiter dictum*, and a competing title, express or prescriptive, was probably not in contemplation. The Lord President repudiated the idea, that a right of salmon fishing on one bank implied a right to push it forward as far as the owner pleased, until met by one having a clear title to fish on the opposite bank. See also opinion of Lord Craigie in *Ashburton* v. *Mackenzie*, 8 July 1829; 7 S. 849, where he says that a party who has a right of fishing, may, as an accessory of the right, draw his nets on the lands *ex adverso* of those from which he has the right to fish. The remark was *obiter dictum*, and cannot have much weight. Lord Craigie probably contemplated the case where there was no competing claim.

is the usual case, the grant of lands on one bank contain the words '*cum piscationibus salmonum*,' the presumption is, that the right of fishing is limited to drawing the nets on that side only; but if the right of salmon fishing be disconnected with the property on either bank—if it be, in fact as well as in theory, a separate tenement, a right of fishing from either side is presumed, and a liberty of drawing nets on either shore. In either of these cases prescriptive possession may serve to define the measure of the right acquired, either by limiting it to one bank or extending it to both.

Where rights of salmon fishing are held by each of the proprietors of opposite banks, the right of drawing the nets is limited in broad rivers to the side on which the fishings lie; but if, from the nature of the bank, there be an impossibility of drawing the nets on his own side, the proprietor of that bank would probably be entitled to exercise his right in the only method which is possible for him, namely, by drawing his nets on the bank of the opposite proprietor; or, at least, a right to do so might be established by prescriptive usage, unless the terms of parties' titles precluded such a construction. Such a state of circumstances would be more likely to arise in a narrow river, where the character of the stream or bank at one side frequently makes the drawing of nets impracticable. No case seems to have occurred in which a right has been established in such circumstances, of drawing nets upon the opposite proprietor's bank, but there seems to be no sufficient reason for excluding it; for, the opposite proprietor being only entitled to one half of the fishing, he is placed in no worse position by being obliged to suffer the joint occupancy of the bank, than he would be if circumstances permitted the joint proprietor to exercise his right from his own bank. The proprietor of the unsuitable bank is entitled to exercise the right of fishing which his titles confer upon him; and if the river permits of net fishing, he possesses, as an accessory of the right, the privilege of drawing his nets on the

adjacent land. If his own bank, from its nature, admits of such a use, it is of course primarily liable; but if it does not, then it is probably fair that he should be allowed a joint right to the use of the opposite bank in common with the person to whom it belongs. If such a right is not conceded to him, his own right must, in the circumstances supposed, necessarily be limited to rod fishing or such other means as the nature of his bank permits.

A grant of barony, with the salmon fishing in a river bounding one side thereof, though the right be not expressly limited to one bank, will not convey a right to salmon fishing outwith the limits of the barony; and even when fortified by possession, it will not be sufficient to establish a right to the fishing from the opposite bank, when that fishing is expressly included in the titles of the opposite proprietor (*k*). Where the charter is a bounding one, no amount of possession will serve to extend the right beyond the limits defined (*l*).

A grant of salmon fishing *ex adverso* the lands of a proprietor whose lands are on the south bank only, as well as the right of salmon fishing 'on the back of' an island lying in the middle of the stream, does not necessarily imply also a right of fishing from the side of the island nearest to or facing the bank of the proprietor; but a right of salmon fishing on the opposite or northern bank of the river held by another person, does not confer upon him, at least without possession, the right of fishing from the northern shore of the island (*m*).

(*k*) *Lord Dalhousie* v. *M'Inroy*, 20 July 1865, 3 Macph. 1168.

(*l*) *Milne* v. *Smith*, 23 Nov. 1850, 13 D. 112.

(*m*) *Richardson* v. *Hay*, 1862; 24 D. 775. The decision only went to the length above stated. The claim of the northern proprietor to fish on the north bank of the island to which he had no express title, and to which he did not prove possession, was repelled; but the claim of the southern proprietor, who was in the same position, of having neither express title nor possession to the fishing on the north bank of the island, was not sustained. The Court declined to express any opinion as to his right. The right of the crown to the north bank of the island, in this state of the titles, was not discussed.

A bank or island of sand or mud may arise in the bed of a river, and the interests of parties having rights of salmon fishing from the banks may be seriously affected. The special circumstances of each case must be considered in determining how far the mutual rights of parties are affected by the circumstances, or whether the change is of such a kind as to affect their legal rights at all. Where the bank in question is of an alluvial formation, and is formed in the channel of the river by the natural action of the stream,—in other words, where it is truly a portion of the *alveus* itself, and not an island of earth detached from the shore, the mutual rights of parties will not be affected by the occurrence. The *medium filum*, the boundary line of the opposing rights, must still be drawn midway between the opposing banks, and not in the centre of the channel which has been formed by the deposit. The interests of either party may thus be seriously affected, injuriously or advantageously, but their mutual rights remain the same. The prescriptive possession, however, of an altered mode of fishing, adapted to the altered circumstances of the channel, may have the effect of establishing an altered right (*n*).

Cases of great nicety may arise where an island or bank is situated in the river, and where rights of salmon fishing are held by the proprietors of both banks. Such cases usually involve specialties (*o*). If an island is situated wholly within one-half of a river, and the fishing around the island and from its banks be the established property of one of the riparian proprietors, both by express grant and possession, if it changes its situation by the action of the stream and travels into the area over which adverse rights of fishing extend, the question may arise whether it travels charged with the rights of fishing which are attached to it and which are the estab-

(*n*) *Lord Zetland* v. *Glovers of Perth*, 31 Jan. 1868, 6 Macph. 292; *Wedderburn* v. *Paterson*, 22 March 1864, 2 Macph. 902.

(*o*) *Lord Zetland* v. *Glovers of Perth*, *supra*.

lished property of the first party, or whether the action of nature is to transfer the right, and the fishing around it become the property of the person into whose area it has moved.

A title to lands adjoining a certain river 'with the salmon 'fishings of the river,' is presumed to confer a right of salmon fishing, not over the whole river only but *ex adverso* the lands; at least it cannot be extended beyond those limits so as to be effectual against a title, prescriptive or otherwise, existing in another person (*p*). It is not necessary, however, that a right of salmon fishing granted indefinitely along with certain lands, should refer only to the waters opposite those lands; it may be construed by prescription to extend beyond those lands, unless it be overcome by a preferable title in another person. Neither does a right of salmon fishing connected with lands necessarily imply a right, where the river is several miles in width, of carrying on the fishing to the opposite bank or coast, although clear and continuous usage might substantiate such a right (*q*).

A grant of fishings '*in ostio fluminis*,' is an indefinite expression, which may give rise to disputes as to how far it extends. The Court in one case held that the expression indicated a moveable boundary, the line where the river runs into the sea varying of course with the tide. The House of Lords considered the *ostium fluminis* not to be confined to a point, but to comprehend the whole space between the lowest ebb and the highest flood mark, and therefore to be an immoveable space instead of a moveable point (*r*). 'One half of the 'fishings' in a certain water, is a term, the construction of which must depend on the circumstances of the case, and on the expressions used in the charters of the neighbouring pro-

(*p*) *Lord Abercromby* v. *Lord Breadalbane*, 18 July 1843; 5 D. 1389; *Maitland* v. *M'Clelland*, 21 Dec. 1860, 23 D. 216. In this latter case such a title was held ineffectual against what was then supposed to be the public right to take oysters.

(*q*) *Richardson* v. *Hay*, 12 March 1862, 24 D. 775.

(*r*) *Duke of Gordon* v. *Earl of Moray*, 1728, 1 Cr. and St. App. p. 8, and 2 Paton's App. p. 78.

prietors. The expression is usually held to mean the fishings in the river *ex adverso* the lands of the proprietor up to the *medium filum* of the stream, on the footing that some one else has the right to the fishings on the other side. In other circumstances, the phrase might have a different signification (*s*).

A right to salmon fishing may be constituted by titles conveying certain lands 'with the salmon fishings pertaining 'thereto.' This expression does not necessarily imply that the salmon fishings should be altogether, or even in any part adjacent to, or *ex adverso* the lands conveyed; for it occurs frequently in practice that salmon fishings effeir to or belong to lands to which they are not altogether, or not at all, contiguous. It is exceedingly common to have salmon fishing extending beyond the limits of the lands along with which they are granted; and in that case they effeir to the lands though they are not adjacent to them. The extent of the fishings thus conveyed as effeiring or pertaining to certain lands, if something more is claimed than what is *ex adverso* or adjacent to the lands, must be proved either by express description in the charter, or it may be explained so as to comprehend something more than a fishing in the water *ex adverso* of the lands to which the salmon fishings are attached. This explanation may be afforded in either of two ways. A party possessing such a title may competently show by proof that the true meaning of the grant is of such a comprehensiveness,—that the title, when properly explained, always comprehended within itself these fishings, because the words used, have, in the interpretation of the geographical names, a certain definite and well known signification, and the description has been generally understood to include the extent claimed, and that the words and description used had that signification at the time the grant was made (*t*). The ex-

(*s*) *Stuart* v. *M'Barnet*, 30 March 1867, 5 Macph. 753.

(*t*) This occurred in the case of *Mackenzie* v. *Davidson*, 27 Feb. 1841, 3 D. 646. It was there observed, that an express grant of salmon fishing 'in the bay of

tended signification may also be established by proving that for time immemorial the right of fishing has been exercised beyond the mere limits of the water which is *ex adverso* of the lands, and that by virtue of forty years' or immemorial possession, the title which was formerly perhaps not so broad, has come to comprehend these fishings. In both of these ways it is competent to explain such a title, and to make it applicable to waters which are not *ex adverso* of the lands (*u*).

The possession necessary to explain the terms of a crown grant of salmon fishing, as extending beyond the limits of the lands to which they are attached, must not be short of the prescriptive period of forty years, and proof to this extent will be required whether there be a competing title or not. An opinion to this effect was decidedly expressed in the case of *Fraser* v. *Grant* (*v*); although Lord Benholme, considering that the possession necessary to explain a title which is ambiguous, need not be identical with the possession necessary to extend a title originally defective, held that a title where there is nothing to compete with it, no adverse possession, may very satisfactorily be explained by a possession for something less than the forty years of prescription, which is necessary as against a competing title.

The rule that a grant from the crown to the salmon fishing on one bank of a river does not divest it of the right of granting to another party the salmon fishing on the other bank, is applicable not only to broad rivers where the separate rights can be exercised without confusion and without interference with one another, but applies also to narrow streams where the exercise of the right from one bank necessarily extends over the whole breadth of the channel, and where a

' Gruinard' gave the right without proof of prescriptive possession even *ex adverso* the lands of another proprietor, unless stopped by an adverse right established by that proprietor. This dictum proceeded on the assumption that the fishings in question were within ' the bay of Gruinard.' An issue on that point was allowed.

(*u*) *Fraser* v. *Grant*, 16 March 1866, 4 Macph. 596.

(*v*) 16 March 1866, 4 Macph. 596.

full and simultaneous exercise by both parties is impossible (*x*). In the one case, where the whole subject is not occupied, and cannot be exhausted by fishing from one bank only, the rule is clear and reasonable; but it applies equally to the other case, where the whole breadth of the river is covered by a sweep of the net or a cast of the line, and the whole benefit could be enjoyed from one bank only. But in a river of this kind, though the holder of a grant of salmon fishing on one bank is not entitled to exclude the holder of a grant on the opposite side, he may, nevertheless, interdict a mere trespasser from fishing on the opposite bank (*y*).

Regulation of rights bounded by the medium filum.—Where the right of salmon fishing on opposite banks of the river is held by different proprietors, and where, from the width of the river, it is impossible to carry on the net fishing without sweeping the whole breadth of the stream, or where it is impracticable to do so without transgressing the *medium filum*, it is usual for an arrangement to be entered into between the parties, for example, that each shall fish on alternate days, or take alternate shots with the net. In a conflict between the parties as to the mode of exercising their respective rights, the Court will order such an arrangement to be made, and if it be made between the parties, the Court will see it carried into effect (*z*). This community of interest in the stream does not entitle either party to draw his nets on the bank of the opposite proprietor; the right being granted in connection with the bank entitling him only to use it in such connection (*a*). The alternate method of fishing is a matter

(*x*) *Stuart* v. *M'Barnet*, 30 March 1867, 5 Macph. 753.

(*y*) See *infra* v. *Title to sue.*

(*z*) *Lord Gray* v. *Magistrates of Perth*, 1750, M. 12792; 1 Cr. and St. 645.

(*a*) *Lord Monimusk* v. *Forbes*, 1629, M. 14264; *Stuart* v. *M'Barnet*, 1867, 5 Macph. 753. In the case of *Ashburton* v. *Mackenzie*, 1829, 7 S. 849, Lord Craigie seems to have expressed an opinion contrary to this view; but the remark was *obiter dictum*, and cannot have much weight. The first part of his opinion, that 'where a party has a right of fishing he is entitled to shoot his nets quite across

of necessity, and of universal practice; and as the arrangement will be enforced and given effect to by the Court, it is immaterial to inquire whether it can be stated by either party as a legal right, or is to be viewed simply as a mutual arrangement, a joint understanding and sufferance, acted on for mutual benefit and convenience. The point seems never to have arisen in practice, but it is thought that not to admit it as a *right* existing in both parties, would be to deny to them the only effectual method of exercising their right (*b*). The general usage which has been adopted in regard to net fishing, does not of itself confer a right on either party of fishing within the bounds of the opposite fishing, except for net fishing alone. The circumstance that there exists in a particular case an established custom of transgressing the *medium filum* in sweeping the net, does not imply that a similar right exists in regard to rod fishing; at least it does not imply such a right where there is space for casting the line within the boundary. It does not imply the right of casting the fly beyond the *medium filum*, and still less of mooring a boat beyond the mid-channel for fishing purposes. A custom established in relation to one mode of fishing will not of itself support a similar custom in relation to another mode. A usage which may be essential to the full enjoyment of the right in one case may in the other amount to a mere trespass or invasion of the right of the opposite proprietor.

Whether a proprietor of salmon fishing on one bank of a river is entitled to fish with rod and line beyond the *medium filum* of the stream, and within the area of water connected

'the river,' will not be called in question. He probably contemplated the case of no competing right on the opposite bank.

(*b*) Lord Medwyn in *Milne* v. *Smith*, 23 Nov. 1850, 13 D. 121, seems to doubt if the practice could be enforced by either party as a legal right in a court of law; but he attributes to it qualities which seem to give it all the force of a legal right. The usage may not confer an abstract or separate right of salmon fishing in the waters beyond the *medium filum*, but it seems to confer a right of extending the sweep of the net to those waters.

with the opposite bank, is a question which has never been decided (*c*). If the river be a wide one, or wide enough to admit of the line being cast without encroaching beyond the centre of the stream, the right is probably limited to that portion. In rivers of this kind the right can be fully exercised without transgressing it; a conveyance of the salmon fishing from one bank affords no sufficient title by itself to overstep the line, for half of the stream only is conveyed; prescription is ineffectual to extend the right, for prescriptive possession by rod fishing is of no avail; or, if the charter be a bounding one, no amount of possession will extend the right beyond the limits defined. In rivers of this nature, it is probably exceeding the right conveyed, either to stand in that portion of the *alveus* beyond the centre of the stream, or to moor a boat there for fishing purposes, or even to cast a line beyond the *medium filum;* in either case a trespass is committed. It has been supposed by those who maintain the right of a rod fisher to overstep the centre of the stream, that he may cast his line as far across the river as he can, and that so long as he cast away from his own bank, he may approach as near the opposite shore as he chooses—that so long as he fishes with his back to his own shore, he may go the whole way across the stream; but that if he were to cast from the opposite shore or from the *alveus*, and with his back to the opposite shore and towards his own, a trespass would be committed. These rules, it is thought, receive no countenance from such authorities as bear upon the point, though they are undoubtedly to some extent recognised in practice.

In narrow rivers, the question is equally open as regards legal decision; but there can be little doubt that where the right cannot be properly exercised without throwing the line beyond the *medium filum*, the right to do so is implied. In these streams, as in wide rivers, the centre of the stream is

(*c*) *Somerville* v. *Smith*, 22 Dec. 1859, 22 D. 288, Lord Deas expressly reserved the point.

the actual boundary of the right; but where the limitation of a proprietor of one bank to casting his line within his own area of the water would amount to the practical denial of the right, no such limitation can be recognised (*d*).

The *medium filum* of the stream being the boundary between opposite proprietors, and the exercise of their rights being in some cases strictly limited by that line, it is important that it should be defined as accurately as possible. But in this there must frequently be great difficulty, and no rule has been laid down which in all cases may be applied. Is the line to be drawn in the centre of the stream, or in the centre of the channel? In many cases the current and stream is altogether within one half of the channel, and flows deep and strong close to the one bank, while the other half of the channel is a gravel bed, dry, or covered by a few inches of water. In such a case the value of the stream for fishing purposes is altogether on one side of the channel, the right of fishing in the other half being absolutely worthless. In such a case it is a question of the highest importance to both proprietors, whether the boundary line is to be considered as cutting the stream in half, or is to be drawn midway between the banks. If the line be drawn in the centre of the channel, rights which on the face of them are equal, may be of the greatest difference in value; on the other hand, if the line is to be drawn in the centre of the current, it will be liable to constant alteration according to the state of the water, as a flood or a drought might carry the stream to one side of the channel or the other. These difficulties and anomalies seem important,

(*d*) In narrow streams which can be covered by a cast of the line, it is unusual to find separate rights of salmon fishing existing in the proprietors of the opposite bank. In such case the salmon fishing in the whole stream is commonly granted along with one or other of the riparian estates. Where each has a separate right, it is not uncommon that the titles of one proprietor should convey to him the right of fishing on certain days of the week, while the opposite proprietor has the remaining days; or, this arrangement may be effected by mutual agreement. Where neither state of matters exists, each party will be entitled to exercise his right to the fullest extent, provided he do not act *in æmulationum vicini.*

and no principle has been laid down for their solution; but in practice they are not likely frequently to arise, for in rivers of such magnitude that the *medium filum* is observed in fishing, the central line of the channel and the central line of the stream is generally identical, and floods produce less alterative effects on the bed of the stream.

It frequently happens, however, in rivers, especially in those affected by the tide, that a bank of sand or mud, or other alluvial deposit formed by the action of the stream, arises in the channel, and the interests of parties possessing rights of salmon fishing on the opposite banks are thereby seriously affected. The channel may either be divided midway by the obstruction (*e*), or it may be wholly situated within the area of one of the opposing proprietors (*f*). Such cases must always depend upon specialties, and the character of the bank itself is an important element to be considered in deciding how far the rights of parties are affected by the circumstance, or whether the change is of such a kind as to affect their legal rights at all. When the bank in question is of alluvial formation, and is formed in the channel of the river by the natural action of the stream; in other words, where it is truly a portion of the *alveus* itself, and not an island detached from the shore, the mutual rights of parties will not be affected by the occurrence. The *medium filum*, the boundary line of the opposing rights must still be drawn midway between the opposing banks, and not in the centre of the new channel which has been formed by the deposit. The interests of either party may thus be seriously affected, injuriously or advantageously, but their mutual rights remain the same. The prescriptive possession, however, of an altered mode of fishing, adapted to the altered state of the channel, may have the effect of establishing an altered right. If the obstruction arise in the centre of the channel, the position of the *medium*

(*e*) *Wedderburn* v. *Paterson*, 22 March 1864, 2 Macph. 902.
(*f*) *Lord Zetland* v. *Glovers of Perth*, 31 Jan. 1868, 6 Macph. 292.

filum is not thereby altered; the centre of the stream is to be taken as fixed by a line drawn down the centre of the river before it meets the obstruction, and carried on without deflection till it joins the centre line of the stream below the obstruction. Again, if the obstruction consist of an island or portion of the bank broken off and carried into the stream, this might, in certain circumstances, be held as altering the course of the stream, or as carrying forward along with it the right of fishing and altering the incidence of the *medium filum* to a position nearer the opposite bank. But the diversity of possible circumstances is unlimited, and no positive rule can be laid down. Where the channel is liable to constant alteration, the Court will only fix the rights of parties according to the circumstances presently existing.

The right of salmon fishing in a river follows the river if it changes its course, even though the new channel intersects the lands of another unconnected with the fishings. In this way, if a river changes its course at its mouth, the river fishings may be transferred to a locality where they interfere with previously existing sea-shore fishings; all that the Court can do is so to regulate the respective rights that the patrimonial interest of either party shall suffer as little as possible by the change (*g*).

The right of a proprietor of salmon fishing to follow the river if it changes its course arises, whether the change is effected by natural process or by artificial operations. An embankment raised by the proprietor of the bank cannot exclude the proprietor of the fishing from the river, nor can it prevent him from making use of the adjacent land for the purpose of drawing his nets.

Where disputes arise as to the boundary line of coterminous rights of fishing, the Court will fix the same according to the titles, express or prescriptive, of the parties; and in order to carry out the principle of division, if the natural

(*g*) *Straiton* v. *Fullarton*, 1752, M. 12797; *Brodie* v. *Magistrates of Nairn*, 1796, M. 12830.

boundary is not sufficiently specific, they will order artificial landmarks indicating the line to be fixed up (*h*); or a remit will be made by the Court to a surveyor to make a plan of the locality, and the line of division will be marked thereon, and signed by the President of the Court (*i*).

The particular questions which arise in ascertaining the extent of a grantee's right to fishing in a loch will be considered under the head of trout fishing, which is the species of fishing to which such questions usually relate.

During the dependence of a competition the Court may appoint a neutral person at whose sight the fishing may be carried on, and an account kept of the fish that are caught (*k*); or the party in possession may himself be ordained to keep such an account, and the Court will not insist on its production in Court *pendente lite*, in the absence of a specific allegation that it is improperly kept (*l*). This course has been considered preferable to granting interim interdict even on caution found; for in that case, after the question of right is decided, and if the party interdicted prevail, a subsidiary and sometimes difficult question may arise as to the amount of damage sustained in consequence of the wrongous interdict. The Court will grant interdict against a party attempting, by violent means, to vindicate a disputed right (*m*).

TITLE TO SUE.

It is necessary to consider what amount of interest will entitle a person to pursue an action relating to salmon fishing. In a declarator of right, or in a competition between two parties as to a right of salmon fishing in a particular

(*h*) *Duke of Gordon* v. *Earl of Moray*, 1728, 1 Cr. and St. 8, and 2 Paton 78.

(*i*) *Dunbar* v. *Brodie*, 1765, 6 Paton, 769 and 775; *Magistrates of Dingwall* v. *Mackenzie*, 1834, 7 W. and S. 306.

(*k*) *Earl of Fife* v. *Magistrates of Banff*, 27 Nov. 1829, 8 S. 137; *Carnegy* v. *Brand*, 6 July 1826, 4 S. 802.

(*l*) *Duchess of Sutherland* v. *Gilchrist and Murray*, 15 Dec. 1837, 16 S. 237.

(*m*) *Lady Ashburton* v. *Sutherland and Mackenzie*, 8 July 1829, 7 S. 849.

locality, no special title to sue is required, though the result of the action will of course depend on the validity of the titles. The question of the rights of parties to interdict or object to fishing by others, divides itself into two heads—(1) title to object to fishing carried on in a legal manner, and (2) title to object to fishing carried on in an illegal manner. The general rule is, that where there is a public law prohibiting anything being done, every person injured by a violation of it has a title to complain; but when the act is not illegal in itself, and there is no allegation that the pursuer has any right to the fishing challenged, there is no title to sue. Though a person who has a right of salmon fishing on a river, or on the sea coast, may be said to have an interest in seeing that no other person, without a sufficient title, exercises the right on any part of the same water, it is, nevertheless, *jus tertii* in him to complain of such fishing, so long as it is carried on in a manner which the law permits, and so long as he himself is unable to allege any right to it (*n*). Damnification of this kind alone is not sufficient to confer a title to object; there must be damnification *cum injuriâ*. A proprie-

(*n*) *Mackenzie* v. *Gilchrist*, 20 Jan. 1829, 7 S. 297; *Mackenzie* v. *Houston*, 13 Aug. 1831, 5 Wilson & Shaw, 422. In this latter case the title of the pursuer to insist was sustained, inasmuch as he *averred* a right to the fishing in question; but, failing to prove each a right, he was found to have no title to object to lawful fishing.

There is some difficulty in reconciling this decision with the dicta of the judges in the case of *Stuart* v. *M'Barnet*, 30 Mar.; 5 Macph. 753. An opinion was there expressed, that a proprietor of salmon fishing on one side of a river is entitled to object to a mere trespasser fishing in a legal manner on the opposite bank, though the objector himself alleged no right to the fishing on that side. This seems an analogous case to that of *Mackenzie* v. *Houston*, where a person who himself alleged no right was held to be not entitled to inquire into the right of one who *might have been* a mere trespasser, and who, though he was proprietor of the adjacent lands, would have been a trespasser on the salmon fishing had he held no title to it. In the peculiar circumstances, however, of the case of *Stuart* v. *M'Barnet*, where the stream was a very narrow one, a person, in fishing from the opposite bank, would not merely have indirectly affected the objector's interest, but would have invaded the same area of water with his line, so that the objector, though he alleged no right to fishing from the opposite bank, had a most direct interest in the water connected with it.

tor of fishings has, in respect of his private right of property, such an interest as will constitute a title to complain of a breach of the statutory prohibitions. But the evil of which he can complain must consist in a violation of the laws enacted for the preservation of the breed of fish, and the protection of the public interest. The only party entitled to object to fishing which is carried on in a legal manner, is one who himself alleges a right to it, whether that person be the crown, or a grantee from the crown. But though it is *jus tertii* for a party who has himself no claim to the fishing, to interfere with fishing carried on in a legal manner by another, he is entitled to object to obstructions of any kind which interfere with the passage of the fish to his waters (*o*). And probably he is entitled to object to fishing carried on in a manner not illegal, if held on a valid title, but which causes an obstruction in the river, though it does not come within the prohibitions of the salmon fishery regulations. A cruive dyke, for example, erected right across the river, though in some cases a legal method of exercising the right of salmon fishing, is an obstruction of such a character, so injurious to the rights of the other proprietors, that any of them would probably be entitled to sue for its removal, without himself producing a title to the fishing in question (*p*).

The rule, that a party is entitled to object to unlawful fishing, without himself alleging a right, though he is not entitled to object to lawful fishing, is sometimes productive of anomalous consequences. Acts comparatively harmless, such as throwing stones into the stream (*q*), which may tend to prevent salmon from ascending into the waters of the pursuer, may be objected to, if the interests of the upper proprietors are thereby affected; while the most destructive methods

(*o*) *Mackenzie & Munro* v. *Mag. of Dingwall*, 19 Dec. 1834, 13 S. 218.

(*p*) *Mackenzie* v. *Houston*, 13 Aug. 1831, 5 Wilson & Shaw, 422; Lord Chancellor's opinion. *Forbes* v. *Leys, Masson & Co.*, 9 July 1831, 9 S. 933, and 5 W. & S. 384.

(*q*) *Duke of Queensberry* v. *Marquis of Annandale*, 1771, M. 14279.

of fishing, if unprohibited by law, are safe from attack. An upper proprietor may complain of a person lower down the stream frightening and stopping the salmon *without* killing them, though he cannot complain of his stopping them *by* killing them, so long as the killing is effected in a manner not prohibited by law.

A proprietor of lands, lying along a small portion of a river or bay, who holds an express grant of 'the salmon fishing in the bay' or river, has a sufficient title to insist in a declarator of exclusive right to the salmon fishing in the whole bay or river, as against another proprietor, whose lands are adjacent to the bay or river, and who claims a right to the salmon fishing *ex adverso* of his lands, not in virtue of an express grant, but in virtue of prescriptive possession on a general title (*r*). The title may be sufficient to sue, though not to prevail.

The rule that a person who himself alleges no right is not entitled to object to legal fishing by another, extends to a case where the person sought to be interdicted claims no right (*s*); but an allegation of a right of fishing, even *ex adverso* the lands of another, confers a sufficient title to interdict the proprietor of the bank from fishing in that locality, though he avers the immemorial usage of the sport (*t*).

An illegal method of fishing may be objected to by any person whose interests are affected by it. The most direct manner in which a right of salmon fishing may be injured by illegal methods, is when those practices are carried on in that part of the river to which the objector has right; or (unlike the fable of the wolf and the lamb), in the lower parts of the stream, or at its mouth, which the salmon must traverse in order to reach the objector's waters (*u*). But a proprietor has an equal

(*r*) *Mackenzie* v. *Davidson*, 27 Feb. 1841, 3 D. 646.

(*s*) *Duke of Hamilton* v. *Macallum*, 1724, M. 7824.

(*t*) *Ross* v. *Robertson*, 14 Nov. 1855, 18 D. 34.

(*u*) *Duke of Athole* v. *Maule*, 7 March 1812; 16 F. C. 537; 5 Dow's App. 282; *Duff* v. *Fraser*, 13 Nov. 1829, 8 S. 14, 5 W. & S. 57; *Kintore* v. *Forbes*, 31 May 1826, 4 S. 641; *Kinnoul* v. *Hunter*, 1802, M. 14301; Balfour's Practick's, p. 545.

right to object to illegal practices carried on higher up the stream; because by that means his interests are affected by the salmon being prevented getting up to the head waters of the stream where they are accustomed to spawn (*x*). It is no sufficient answer to an action for the removal of an illegal obstruction that there exist on the same river other obstructions of the same nature, which of themselves would be sufficient to impede the ascent of the fish (*y*). In short, where an illegal mode of fishing is used on a river, or an obstruction for other purposes is erected, every heritor having a right of salmon fishing, whether superior or inferior, is entitled to pursue for its removal; and however trifling be a person's interest in the river, he may object to anything which tends to diminish or impede the fish (*z*). Only those whose interests are affected by the illegal act are entitled, as has been explained, to pursue for interdict; but suppose a case where the salmon fishing in a river belonged throughout all its course, and in the sea at its mouth, to one proprietor, and he introduced a novel method of fishing, by cruives or fixed engines in the stream, or other means to which he had no right, and which have been declared illegal by statute. Is there no person who would have a title to interfere? There being, *ex hypothesi*, no one else who has an interest in the fishing, in the river or at its mouth, would not the crown, as superior of all the salmon fishing in Scotland, be entitled to

(*x*) *Colquhoun* v. *Mag. of Dumbarton*, 1804, M. 14283. But see *Munro* v. *Munro*, 7 July 1846, 8 D. 1029, where a proprietor of salmon fishing in the firth of Cromarty, in or opposite to the estuary of the river Alness, but who had no right of fishing in the river, was found to have no title to pursue for the removal of a weir in the river. The exact relative positions of the pursuer's fishings, and the obstructions, etc., objected to, does not appear from the report, but they seem not to have been so closely connected that the pursuer's fishings could be substantially affected by operations in the river.

(*y*) *Forbes* v. *Leys, Masson & Co.*, 9 July 1831, 9 S. 933, and 5 W. and S. 384.

(*z*) Opinion of Lord Craigie in *Forbes* v. *Leys, Masson & Co.*, 5 Wilson and Shaw, p. 390. In *Munro* v. *Munro*, 7 July 1846, 8 D. 1029, the pursuer's right *to prevail* was negatived, when—his fishings being situated not in the river, but near the mouth of it—he sought to prohibit a proprietor from diverting the river, by means of an artificial cut, for the use of a mill.

interfere to put a stop to the illegal fishing? This question, which might come in some cases to be of considerable importance, appears never to have been raised or decided; and the Lord Advocate Moncreiff, when examined on the subject by the House of Lords' Committee in 1860, recognized the question as a novel one, and was unable to give any answer on the subject. There seems no ground for supposing that the exercise of the right of salmon fishing in a manner prohibited by statute, on the part of a heritor whose title was unquestioned, could be viewed in the light of a penal offence, so as to admit the interference of the Lord Advocate as the public prosecutor.

An interest in the salmon fishing of a river being thus considered necessary to entitle a party to interfere with illegal operations, the question arises, what amount of interest will be sufficient to confer the right? It may happen that the proprietor of the salmon fishing, who is exercising his right in an illegal manner, possesses a title not only to all the salmon fishing in the river, but also to those in the estuary and on the adjoining sea coast. But there may be heritors who possess a title to the salmon fishing on the sea coast at some distance from the mouth of the river in question (*a*). Do they possess a sufficient title, or will their interest be considered too remote, to interfere with the illegal fishing in the river from which they may possibly be many miles distant? The researches of modern science, and the practical experience of fishermen, have disclosed the fact, that the salmon, in seeking the spawning rivers, to which they resort with unvarying regularity, are accustomed to strike the shore at a considerable distance from the mouth of the river, and that in this way their capture by the fishermen on the sea coast, even at some distance from the mouth of the river, is as probable as by the fishermen in the river. Viewed in the light of this circumstance, it is evident that mutual rights arise between the

(*a*) See note (*x*) preceding page, and cases there cited.

heritors, though the localities of their fishings may be a great distance asunder; and it would seem to be an injustice if the right of interference were denied to a proprietor whose interests are so directly affected. If, on this principle, the title to sue of the sea coast proprietor be admitted in a question with a proprietor of salmon fishing in the river, a corresponding right will exist in the river proprietor to interfere with illegal practices on the sea coast:—if indeed there be any manner of fishing on the sea coast which is prohibited by law. But though a title to sue might possibly be admitted in all cases where an interest in the self-same salmon could be set forth, it is obvious that the principle must not be carried too far; and although the capture of salmon in an illegal manner in any river may undoubtedly in some degree affect the breeding stock of the whole kingdom, yet in practice the interest of a distant proprietor will certainly not be considered sufficiently direct to confer upon him a title to interfere. In a case which had reference to the salmon fishing on the Solway Firth (*b*), a proprietor of fishings on the river Nith, which flows into the firth near the western or outer limits of the estuary, brought an action for the removal of stake nets situated near the mouth of the river Annan, which flows into the firth at a point further from the sea, and at a considerable distance from the mouth of the Nith. The interest of the pursuer and his title to sue was called in question, and it was argued, that as the habits of the salmon species lead them to return with unvarying regularity to the river in which they were bred, and as the Nith salmon in their transit from the sea to the river Nith would have no occasion to go so far up the firth as the stake nets at the mouth of the Annan, and as in point of fact the fish which the pursuer was entitled to fish for did not frequent that locality, that therefore those stake nets did not prejudice his patrimonial rights,

(*b*) *Johnston* v. *Mackenzie & Beattie*, 1868, not reported.

and that he had consequently no title to pursue. It was answered, that between the proprietors of rivers flowing into the same estuary, there is such a community of interest as will entitle any one of them to sue for the suppression of illegal fishing, and that as a matter of natural history it was not conclusively established that salmon bred in one river did not occasionally enter other rivers (*c*). The point was not decided, but there seems sufficient ground for holding that the interest of the pursuer was adequate to confer on him a title to object.

In narrow as well as in broad streams, a grant of the salmon fishing on one bank does not divest the granter of the right of fishing from the other bank, and though the exercise of the right, either by net or rod, may necessarily extend over the whole breadth of the stream, separate and independent rights may exist on the other bank. The effect of a separate grant of salmon fishing, held by opposite proprietors on a narrow stream, and the regulation of their mutual rights resulting therefrom, gives rise to many questions of interest and importance, which are discussed elsewhere. But there is a distinction between the rights with regard to objecting to lawful fishing, which are possessed by opposite proprietors

(*c*) Though it has undoubtedly been proved, by a system of marking, that salmon usually return to the streams in which they have been bred, it seems probable that they occasionally enter other rivers; for, of late years, since the pollution of streams has diminished, salmon have been found in rivers where they have been hitherto unknown.

It is probable also, that salmon, before they ascend the river of their destination, swim up and down the estuary with the tide, and that in this way fish which properly belong to a river at the mouth of the firth, may be caught in the nets situated at the upper end. In the Solway, a kind of net was formerly used, called raise-nets, which worked with the tide, and which was constructed so as to capture salmon when coming down the firth with the ebb of the tide. The Quaker Geddes, in Scott's novel of 'Redgauntlet,' was proprietor of such nets, and the working of them is there described. As legal evidence of the existence of these nets at the time when the events of 'Redgauntlet' are supposed to have taken place, Scott's novel is probably insufficent. That they were known at the time when the novel was written is certain, and from the author's well known historical accuracy, it is unlikely that he was guilty of the anachronism of describing them as being in existence at the date to which his story referred, unless they were so in fact.

on small streams, and those which are possessed by opposite proprietors on large streams. In wide rivers the proprietor of the fishing upon one bank has no title to object to fishing carried on in a legal manner from the opposite bank, unless he himself alleges a title to that fishing. But in narrow rivers, where the exercise of the right from one bank necessarily interferes with the exercise from the other, an opinion has been expressed, that a proprietor of the fishing on one bank, although himself claiming no right to the fishing on the opposite side, is, nevertheless, entitled to interdict legal fishing on that bank, carried on by one who is a mere trespasser. This opinion was expressed by Lords Deas and Ardmillan (*d*); but, considering that it was *obiter dictum*, and that the point was not expressly raised, it is perhaps insufficient authority for concluding that a proprietor of the salmon fishing on one bank is entitled to turn off a trespasser on the other bank,—that party exercising a right which is not in the objector, and which he is not entitled to use. That he would be entitled to interfere with a trespasser on the opposite bank, who was fishing in an *unlawful* manner, there is no reason to doubt; but would it not be *jus tertii* for him to interfere so long as the trespasser confined himself to fishing in a lawful way, and so long as he abstained from encroaching on any right which was in the objector? Where a river is wide (as was observed by Lord Ardmillan), and where the rights of the opposite proprietors extend only to the middle of the stream, it might be *jus tertii* in him to prohibit a procedure from the other bank which does not come up to the *medium filum*, and which does not encroach on the area over which his right extends. Would it not be so also, in the case of a narrow river, where a common interest, and that only, can be considered to exist? (*e*) Lord Deas concurred with Lord

(*d*) *Stuart* v. *M'Barnet*, 30 March 1867, 5 Macph. 753.

(*e*) This opinion of Lord Ardmillan seems to countenance the notion, that a proprietor of salmon fishing on one bank of a wide river has no right to cast his line

Ardmillan, in thinking that in a narrow river, though a grant of the salmon fishing on one bank gave no title to fish on the opposite side, yet a proprietor of the one bank might interdict a mere trespasser fishing on the other side, even though he himself has no right to fish from that side. Lord Deas considered that he had this right stronger than in the case of a trespasser fishing lower down the stream, on a part of the water over which the interdictor had no right of fishing, for then the trespasser only interferes with fish which may come up to him; whereas, when the trespasser is fishing opposite to him in a narrow water, he is casting his line, and trying to capture fish which lie in the very same area over which his rights extend, and which, to say the least, is common to him and the opposite proprietor. That the latter case is a stronger one for interference, there can be no doubt; but, except the dicta which we have referred to, there seems no authority for holding that it would not be *jus tertii* in both cases (*f*).

A proprietor, whose lands are adjacent to a river or to the sea shore, though himself claiming no right of salmon fishing, is entitled to sue for the removal of obstructions on his property made by the grantee of the salmon fishing, for the enjoyment of his right; and the title to object exists, even though the obstructions or other interference with the *solum* be upon the sea shore, which is open to the public for certain uses (*g*).

Application for interdict is competent in the Sheriff-court,

beyond the *medium filum*, and that if he does so, he trespasses on the area belonging to the opposite proprietor. This question was discussed, but not decided, in *Somerville* v. *Smith*, 22 Dec. 1859, 22 D. 279. The point is noticed hereafter, *voce* Trout Fishing.

(*f*) *Duke of Hamilton* v. *Macallum*, 1724, M. 7824. The same question was discussed, but not decided, in *Somerville* v. *Smith*, 22 Dec. 1859, 22 D. 279, though in that case the Lord President's opinion seems to have been in favour of the right to object. He declined to express 'any judgment that would affirm the proposition, 'that a party having no right at all in himself, and not having a right from any 'other person, is entitled to fish for salmon or trout to the prejudice of those who 'have a right there.' See *infra*, *voce* Trout Fishing.

(*g*) *Nicol* v. *Blaikie*, 23 Dec. 1859, 22 D. 335.

if the the claim of the respondent is merely possessory. In the case of *Johnstone* v. *Murray* (*h*), a party producing a title to lands adjacent to a loch and the fishings therein, and alleging exclusive possession thereof, was found entitled to interdict in the Sheriff-court, to the effect of obtaining a possessory judgment as against a party shewing merely a right to the lands adjacent to the loch.

The right of a joint proprietor of fishings in a river and in a loch, to object to a stranger fishing, without the concurrence of the other proprietors, belongs to a class of questions which are discussed under the head of trout fishing.

USE OF BANKS.

The right of the public to the use of the shore of the sea and the banks of public rivers in connection with the public right of white fishing have already been noticed, but there remains something to be said of the rights of a grantee of salmon fishing to the use of the banks in cases where they are not held by him along with the right of fishing. The right of salmon fishing in a river may be, and is frequently, granted apart from the adjacent lands, and in such cases the grantee is entitled, as a pertinent of the fishing, to draw his nets on the banks without the proprietor's consent (*i*). The right is not of the nature of a servitude, for it is, properly, an accessory to that which is in itself property. The right over the banks extend to all uses which are necessary for the purposes of fishing, and includes the right of access through the adjoining lands for the fishermen, and for horses and carts conveying to the water the materials of fishing. It has been found also to include a right to fix poles, etc., upon the land adjacent to the river, where the sea ebbs and flows, to dry and mend nets (*k*). In the same case, the Court held that the proprie-

(*h*) 5 Mar. 1862, 24 D. 709.

(*i*) Ersk. 2. 6. 15; Stair, 2. 3. 69; *Miller* v. *Blair*, 22 Nov. 1825, 4 S. 214; *Mackenzie* v. *Sutherland*, 1826, 2 W. & S. 158.

(*k*) *Matthew* v. *Blair*, 1612, M. 14263.

tor of the adjacent lands, though they are bounded by the river, must leave as much vacant space by the water side as is required for the uses of the fishings. The proprietors of the banks are not entitled to erect anything which will obstruct the fishermen in the enjoyment of their rights (*l*); but these rights must be exercised in a way the least oppressive to the landholders, consistent with their full beneficial use. The extent of use which will be conceded is not to be measured by prescription, but by a sound discretion as to what is reasonable and necessary in the circumstances (*m*).

A proprietor of the bank of a river, who has not the right of salmon fishing, is not entitled to embank his land so as to prevent or injure the fishing further than is necessary for the protection of the land; but, on the other hand, the proprietor of the fishings has no right to perform any operations on the bed of the river of a nature to injure the adjoining lands; he is entitled to use the bank, but not to construct towing paths, or erect 'sights' *in alveo fluminis* (*n*).

A grant of lands on one side of a river with the salmon fishing connected therewith, implies a right only to draw the nets on that side where the lands are situated; but a grant of this limited kind, followed by prescriptive possession, has been found to confer a right of salmon fishing on both sides of the water and of drawing the nets upon both banks (*o*). Such an extended construction, however, could only be given to the grant, in the absence of a competing grant of the

(*l*) *Berry* v. *Wilson*, 1 Dec. 1841, 4. D. 139. In this case where a verdict had established a right in the pursuer to the salmon fishing and right of drawing nets, mooring boats, etc., on the land of the defender, it was held, in application of the verdict, that a sea wall and embankment which the defender had erected, must be removed so far as they impeded the pursuer's rights.

(*m*) A reservation by the proprietor of a salmon fishing, in the charters granted to his vassals, of drawing and drying his nets on the vassal's ground conform to use and wont, is regulated by the prior acts of the superior and his predecessors, and not by the practice of fishers in general. *Earl of Kinnoul* v. *Keir*, 18 Jan. 1814, F. C. xvii. p. 515.

(*n*) *Forbes* v. *Smith*, 19 Feb. 1824; 2 S. 721; 1 W. & S. 583.

(*o*) *Forbes* v. *Monymusk*, 1623, M. 10840; Stair 2. 3. 69; but *see* p. 114–117 *supra*.

salmon fishing from the opposite bank. A grant of the salmon fishing in a river, without limiting the grantee to drawing his nets to one side, conveys, in general, the whole, fishings in that part of the river, and implies a power of drawing the nets on either side. The effect of a definition in the grant of the power of drawing nets, as explaining the extent of the fishing conveyed, has been already discussed (*p*).

A right of salmon fishing, whether it be held in connection with lands or not, implies a right of fishing in any manner recognised by law (with the exception of cruive fishing, which requires a special grant or prescriptive possession of that method); and where the right of fishing is held by one who is not the proprietor of the banks, the right which he has of using the banks for the purposes of fishing, includes a right of using them for the purpose of rod fishing (*q*). A general title, however, to the salmon fishing in a particular river, which requires prescriptive use to define the limits of the right, and to extend it beyond the prescriber's own lands, cannot confer a right to enter the lands of another for the purpose of rod fishing, where the possession which is pleaded in support of the general title has been by rod fishing only (*r*).

The use of the proprietor's bank is an important element in possession. If this be done in an open, public, and regular manner, it constitutes a leading and most important item of proof. In this way, the lands of the proprietor are made subservient to the exercise of the salmon fishing, and such possession being plainly an assertion of right inconsistent

(*p*) *Vide* p. 113, *et seq.*, *supra.*

(*q*) In the case of *Forbes* v. *Earl of Kintore*, 31 May 1826, 4 S. 641, the Lord Ordinary (Mackenzie) appears to have held the opposite opinion, but, so far as can be ascertained from an incomplete report, his judgment seems to have been reversed.

(*r*) *Guthrie* v. *Dunbar*, 27 June 1855, 17 D. 1002. The right might probably have been made effectual by declarator. Rod fishing is ineffectual as a means of prescribing a title. If the right of using the banks of the complainer had been established by net fishing, the lesser right of rod fishing could probably not have been disputed.

with the right of property, contains the most essential characteristics of adverse possession (*s*).

In a private stream, a person who is proprietor of the fishings and also of one of the adjacent banks, is entitled to make such use of the bank for the purposes of fishing or otherwise, as he may think proper. But this power is subjected to the important limitation, that no erections which he may make, and no operations which he may carry on, shall have the effect of altering the flow of the stream, to the possible damage of the opposite proprietor. The proprietors upon the opposite banks of a private river have a common interest in the stream, and although each has a right of property in the *alveus* from his own side up to the *medium filum fluminis*, neither is entitled to use the *alveus* in such a manner as to interfere with the flow of the stream. Erections on the bank which do not impinge upon the water cannot be objected to; but the slightest encroachment upon the stream may be resisted and put a stop to without the necessity of proving that damage has been or is likely to be sustained, for it is impossible to foretell what the result of it may be on the course of the river. And for the same reason, if any objection be taken, the onus of proving that the act is not an encroachment falls on the party making such encroachment, who is, *prima facie*, held responsible (*t*). The rights of the public and of the proprietor to the use of the banks of public rivers have already been noticed (*u*.)

(*s*) *Duke of Roxburghe* v. *Ramsay*, 9 Feb. 1848, 10 D. 661.

(*t*) *Morris* v. *Bichet*, 20 May 1864, 2 Macph. 1082; H. of L., 1 Law Reports, p. 47; *Town of Aberdeen* v. *Menzies*, 1748, M. 12787; *Farquharson*, 1741, M. 12779.

(*u*) *supra*, p. 31, *et seq.*

CHAPTER VI.

LEASE OF FISHINGS.

FISHINGS of all kinds, which are the subjects of property, may be and frequently are the subject of lease. A lease of fishings, which are heritable, must be in writing; and if contracted verbally, is limited in duration to one year (*a*). Different methods of fishing in the same water may be let to different individuals; the right of net fishing, for instance, may be let to one person, and the right of rod fishing to another. Or a right of fishing by a particular method may be reserved by the lessor. A case occurred in which the proprietor of fishings let them, reserving to himself, and his heirs, and successors, and those having his authority, the right of rod fishing. This privilege he subsequently let to a third party, to which the first lessee objected, on the ground that the reserved right was intended to be a privilege of fishing for amusement, and not a means of pecuniary profit. The Court, however, held that it was *jus tertii* to object, and that the reserved right might either be exercised personally or let for a rent. A reserved privilege was thus held to be a proper subject of lease (*b*). A reservation, however, whether occurring in a lease or a disposition, may be in terms which will limit the

(*a*) A difficult question may arise as to the apportionment of bygone rents of fisheries between the heir and executor of a deceased proprietor. There seems to be no authority on the point, but the most reasonable solution appears to be that adopted by Mr Hunter (*Law of Landlord and Tenant*, ii. 316), that fishings being a subject affected by 'seasons,' the survivance of the 'season' may entitle the executor to claim; for example, if the proprietor of the fishings die after the termination of the annual open season, the rents previously due may be accounted *in bonis*, as the produce had then been fully reaped.

(*b*) *Gemmill* v. *Riddell, etc.*, 16 Feb. 1847, 9 D. 727.

right reserved to the proprietor himself and his successors, and in such a case will be strictly construed (*c*).

A lease of fishings convey to the lessee not only the subject itself but all right and privileges pertaining thereto, which the lessor himself can claim, as, for instance, the right of using the bank of the adjacent proprietor. In describing the subject let, the most simple mode is to mention the name and situation of the fisheries, and in cases where there is no natural boundary between co-terminous rights, the limits must be carefully and accurately defined (*d*). The term of entry to a lease of salmon fishing was formerly at Andersmas, the 30th November, which was the commencement of the fishing season. The term of entry is now usually at some period during the close time; and it is advantageous to fix upon that period, as the lessee has the opportunity of making the necessary preparations. The local custom on the subject is generally adopted. In agricultural leases it is usual to reserve the right of fishing, though in no case does it pass without mention, along with the lands (*e*). It is scarcely necessary to say, that a lease of fishings conveys no right to the services of the fishermen employed in them. At no time were they *adscripti*, and they are now, of course, free to engage with whom they please (*f*).

The statute of 1555, relating to warnings to remove, applies to a lease of fishings. Although 'fishings' are specially mentioned in the Act, it was formerly decided that a formal

(*c*) *Duke of Richmond* v. *Wharton Duff*, 25 Jan. 1867, 5 Macph. 310.

(*d*) An excellent form for a lease of fisheries will be found in App. No. 12 of Hunter's *Law of Landlord and Tenant*, vol. 2, p. 631. The following special provisions may be inserted,—(1) A strict prohibition of fishing during close time. (2.) The rent to be payable half-yearly, or at three times in the year; Lammas may be the third term, as payment at Candlemas would be anticipated rent. (3.) The tackle and utensils to be valued upon removal, and if found to be under the value put upon them at the commencement of the lease, the deficiency to be made up by the lessee.

(*e*) But see *infra*, *voce* Trout Fishing.

(*f*) *Woodney* or *Udney* v. *Reid etc.*, 1696, M. 4427.

warning was not necessary, and the doctrine was adopted by one of the institutional writers (*g*). It is difficult to understand the rationale of the decision, as the notion that the statutory solemnities could be superseded by an action was not then held. On this authority, it was pleaded in a later case, that as labourers of the ground were the real object of the statute, and the purpose of it was to give them time to provide themselves with other farms, the mention of fishings, the term of entry to which was then on 30th November (Andermas), was inserted *per incuriam*, or that the application of the Act must be restricted to those which are let along with a rural tenement. The Court, however, contrary to the *dictum* of Bankton, sustained the application of the Act, on the clear ground of fishings being expressly mentioned therein (*h*).

The landlord's right of hypothec applies to a lease of fishings (*i*); and, in two reported cases, has been made effectual over the fish which have been taken,—the *fructus aquæ* (*k*). In the latter case the right was found effectual over fish which had been barrelled and sold in open market; but though the hypothec is no longer legal in such a case, the right over the produce of the fishing is undoubted. Whether the landlord's right extends to the boats and nets, and other implements of fishing, seems never to have been decided, but the weight of authority seems opposed to their liability.

The question whether a lease of fishings implies, in the absence of special mention, the exclusion of assignees and sub-lessees, seems never to have been decided; but as there seems to be an absence, in such a contract, of the necessity for that intimate connection which implies *dilectus personæ*, the better opinion seems to be that a right to sub-let is implied.

(*g*) *Robertson* v. *Calder*, 1732, M. 13836; Bankton, 2. 9. 53.
(*h*) *Gordon* v. *Burnett*, 1783, M. 13859; Ersk. 2. 6. 47.
(*i*) Stair, 1. 13. 15; Bankton, 1. 17. 10.
(*k*) *Cumming* v. *Lumsden*, 1667, M. 6237; *Molison* v. *Smith and Nicol*, 1687, M. 6239.

A lease of salmon fishing, unlike a lease of shooting, is protected by the statute 1449 c. 17 (6 James II.), and is consequently effectual against singular successors; the reason being that a right of salmon fishing is not merely an incident of heritable property, but is in itself a separate estate. A lease of trout fishing, on the other hand, would follow the rule of a game lease, and be unprotected by the statute. With regard to game, though the law was settled by an old case (*l*) it might have been supposed that since the date of that judgment, the rights of sporting having greatly increased in value and importance as a commercial subject, the law might be held to have undergone a corresponding change. But in a recent case (*m*), decided by Lord Barcaple, and acquiesced in, a similar decision was pronounced, the Lord Ordinary being of opinion that though the value and importance of sporting rights had undoubtedly increased, their character had not otherwise been changed. The law thus laid down in regard to game, will apply equally to a lease of trout fishing, but not to salmon fishing, which is a separate real estate.

A proprietor of fishings is liable in damages to his tenant, if the subject let suffer injury at the hands of the landlord during the currency of the lease. A case occurred, in which, although the tenant was aware before entering on the fishings that the proprietor was about to erect a dry dock on the station, yet as he obtained a lease of the fishings as formerly possessed, with absolute warrandice, 'in so far as the different 'stations had been hitherto fished or occupied,' he was found to be entitled to damages for any injury caused to the fishings by the erection posterior to the date of the lease; and it was held that he was entitled to retention of rent in compensation of the damage done (*n*).

(*l*) *Pollock Gilmour & Co.* v. *Harvey*, 5 June 1828, 6 S. 913.

(*m*) *Birkbeck* v. *Ross*, 22 Dec. 1865, 4 Macph. 272.

(*n*) *Hall* v. *Ross*, 23 June 1813, not reported in Court of Session; 1 Dow's App. 201.

General warrandice by the landlord will not render him liable in damages for loss incurred by the tenant in consequence of a public enactment becoming law during the currency of the lease. For example, a person having taken a salmon fishing on a lease for five years or seasons, during the currency of which an Act was passed introducing a uniform period of close time, under circumstances which he alleged rendered its operation more injurious to him than to most other fisheries, and deprived him of about one-third of the produce of his fishing, it was held that he was not entitled to any abatement of rent, and that the proprietor was not liable in damages for any loss which the tenant might have suffered (*o*). The right of salmon fishing is one which is enjoyed only in compliance with statutory regulations; and the subject matter of a lease can only be a right to fish salmon conform to the regulations then existing, or which shall, during the currency of the lease, be enacted by the legislature for the public benefit. Alterations thus imposed must therefore be held, in the absence of special provision, to be in view of the parties at the time of entering into the agreement.

Salmon fishings, though unlet and productive of no revenue to the proprietor, are liable to be entered in the valuation roll, at the rent at which they may reasonably be expected to let (*p*). And fishings which are sub-let by the tacksman at a higher rent than what he pays for them, are liable to be entered in the valuation roll at the higher sum (*q*).

Tenants of fishings are liable in payment of the rates imposed under the Poor Law Amendment Act 8 & 9 Vict. c. 83. By § 34 half of the assessment is payable by the proprietor, and half by the tenant or occupant 'of all lands and 'heritages.' By the interpretation clause, 'lands and heritages' are construed to include *inter alia* 'fishings;' and the

(*o*) *Holliday* v. *Scott*, 28 May 1830, 8 S. 831; Stair, 1. 15. 2; Ersk. 2. 6. 41.
(*p*) *Baird*, 26 Nov. 1861, 24 D. 1456.
(*q*) *Scott*, 24 Jan. 1861, 24 D. 1455.

'fishings' to which it applies are not limited to any particular description.

Salmon fishings, whether they are held in connection with or separate from lands, if they are of adequate value, form a sufficient qualification for the electoral franchise, and the proprietor is entitled to be enrolled in respect of them. They also form a sufficient qualification for the tenant. The subject must be a proper heritable subject; a description which includes all kinds of fishings, with the exception probably of white fishings in the sea (*r*), and of trout fishings, which are not a separate heritable estate, but a mere pertinent of, or privilege connected with, lands. A tenant of salmon fishings in the sea below ebb mark, has been found entitled to be included in the cess roll of the county (*s*).

Fishings are reckoned by Stair among teindable subjects; and fish being among 'the natural fruits of the ground and 'water,' belong to the class of prædial teinds (*t*). They, like other prædial and mixed teinds, appear to be leviable only where they have been 'in use, according to the custom of the 'several places; such are teind-fish for which the buyers of the 'fish were found liable because of that custom past memory, '*Tacksmen of the Bishop of the Isles* v. *Brown*, 15 Feb. 1631 '(M. 15631): but where the fishers were forty years in pos-'session without teind in such a bay it was found sufficient 'to liberate them, *Bishop of the Isles* v. *Fishermen of Greenock*, '24 Nov. 1665 (M. 10758): also in other places there is no 'teind of fishes.' (*u*).

In calculating the annual value of an entailed estate, for the purpose of computing the amount of provisions to widows

(*r*) White fishings in the sea, when appropriated by grant to an individual, have formerly been held as constituting a sufficient electoral qualification. But the validity of such a decision depends on the question of these subjects being capable of grant or appropriation. See p. 20, *ante*. *Gordon* v. *Duff*, 1773, M. 8656; Wight's Election Law, p. 199; Bell's Election Law, p. 52.

(*s*) *Hectors* Kincardineshire, 1832.

(*t*) Stair, 2. 8. 5; Ersk. 2. 10. 10 and 13.

(*u*) Stair, 2. 8. 6.

and younger children, the rental or value of salmon fishing must be included. Salmon fishings form a separate estate in the strictest legal sense, and they are included separately in the county valuation roll; in questions of this kind they must be dealt with as property, and their value, whether let or unlet, whether in the hands of the proprietor or of a tenant, must be computed (*x*). In questions of this character it is immaterial by what methods, rod, net, or cruive, the right of fishing is or might be exercised (*y*).

(*x*) *Leith* v. *Leith*, 10 June 1862, 24 D. 1059; *Macpherson* v. *Macpherson*, 24 May 1839, 1 D. 794, 5 Bell's App. 280; *Menzies* v. *Menzies*, 10 March 1852, 14 D. 651; *Sinclair* v. *Lord Duffus*, 24 Nov. 1842, 5 D. 174. As regards salmon fishings the question is not open to any doubt. The above cases related chiefly to shootings, and from the judgment of the Court in all of them, it follows that the rental of any kind of fishings must be included in questions of this character.

(*y*) *Per* Lords Mackenzie and Kinloch in *Leith* v. *Leith*, *supra*.

CHAPTER VII.

SALMON FISHING—FIXED ENGINES.

THERE are three natural situations or localities in which salmon fishing may be made the subject of grant from the crown, and may be exercised by the grantee—(1), On the shore of the open sea; (2) in estuaries; and (3) in rivers. The *title* which is required to give a right to salmon fishing in these various localities is, as we have seen, the same; but the manner in which the right may be exercised varies according to the locality of the grant. Generally speaking, and excepting the case of cruives, it may be said that the same law applies to rivers and to estuaries, while a separate and distinct rule applies to the exercise of the right on the open sea. The distinction consists in the legality or otherwise of the use of fixed engines.

Situation prohibited for Fixed Machinery (*a*).—The whole course of salmon legislation has necessarily been an interference with private right. Originally, of course, anybody was allowed to catch salmon as he best could; and at common law the only restriction is that the right be not exercised *in æmulationem vicini* (*b*); but it became necessary, in the public interest, to impose restrictions for the preservation of the fish.

(*a*) The Solway is considered separately, *infra*, Chapter XVII.

(*b*) 'The common law will reach all kinds of obstruction in and across the river 'to the run of salmon, and all practices either destructive to the breed of salmon, 'or so noxious to their tastes and instincts as to deter them from ascending higher 'than suits the interests of the parties using such practices. But modes of fishing 'not obstructing the passage of the salmon, and not noxious, the common law will 'not reach or put down.' Lord Justice-Clerk Hope in *Ramsay* v. *Duke of Roxburghe*, 9 Feb. 1848, 10 D. 669.

The general statutes by which these restrictions are imposed are very numerous, and most of them are of considerable antiquity. The policy of legislative enactments, from the earliest period, has been to prohibit the use of fixed machinery (*c*) especially in rivers and estuaries; and a series of statutes, commencing as early as the reign of William the Lion, have been passed with this object. But the first difficulty which arose in the interpretation of these Acts (*d*) was the question whether they applied to the shore of the open sea, or were limited in their operation to rivers and estuaries. The terms used are not explicit; and such expressions as 'fresche watteris, quhar the sea fillis and ebbis,' —' in watteris that fillis and ebbis,'—' within the flude mark ' of the sea,'—' in rivers that has course to the sea,'—' in ' waters quhair the sea fillis and ebbis,'—' within salt watteris,' ' quhar the sea ebbis and flowis,'—' within salt waters that ' ebbis and flowis,'—' upon sands and schauldes far within ' the water,'—and ' upon the water sandis,'—leave much room for doubt, and much difficulty in a precise and accurate definition of their meaning. It has been decided, however,

(*c*) The expression ' fixed machinery ' is not statutory; but it describes generally the kind of engines prohibited.

(*d*) Robert I. 1318, c. 12; James I. 1424, c. 11; James I. 1427, c. 6 (or 116), 1429, c. 22 (or 131); James II. 1457, c. 34 (or 86); James III. 1469, c. 13 (or (87); James III. 1477 (or 1478), c. 6 (or 73); James IV. 1488, c. 16; James IV. 1489, c. 15; James V. 1535, c. 17; Mary 1563, c. 3; James VI. 1579, c. 27; James VI. 1581, c. 15; James VII. 1685, c. 24. The statutes are reviewed by the Lord Justice-Clerk in *Kintore* v. *Forbes*, 31 May 1826, 4 S. 641. The object of them has been recently stated by the Lord Chancellor to be, firstly, the ' securing to the ' salmon a free access from the lower to the upper fresh waters of the rivers, which ' are the natural spawning grounds of the fish; the second object was to secure ' the means of return to the young salmon or smolt down to the sea; the third was ' the prohibiting the taking of unclean fish during certain periods of the year, ' when it was out of season as an article of food.' The regulation of the mutual rights of heritors was not the object of the statutes. *Hay* v. *Magistrates of Perth*, 1863, 4 Macq. 535; and Lords Meadowbank and Gillies in *Duke of Atholl* v. *Maule*. Buchanan's *Remarkable Cases*, 254. The object of legislation in regulating the modes of exercising the right of fishing is to fix the proper duration and dates of close time, and to regulate or prohibit engines calculated ' to destroy the breed of ' fish, and hurte the commoun profite of the realme.'

upon a close construction of the statutes and of contemporary writers (*e*), that the prohibitions of fixed machinery do not apply to the proper shore of the sea; and accordingly, in those localities, it is legal to fish in any manner of way. The prohibitions of the statutes, however, clearly apply to rivers and estuaries; and the only difficulty which remained was to determine the exact line which divides the estuary from the sea, and which separates the region where fixed engines are illegal from the region where they are permitted. The exact definition of the upper boundary of an estuary—the line which divides it from the river—has not been considered of so much importance, because the law regarding fixed engines on either side of it is identical (with the exception of cruives, which will be considered separately); but the ascertainment of the seaward limit of the estuary—the line of demarcation between it and the undoubted sea—has given rise to much litigation and scientific discussion. Various tests have been suggested as supplying a principle of distinction; but as they appeared to lead to different conclusions in the same case, none of them were likely to be accepted by both of the contending parties. The difficulty of defining the limits of an estuary, and of fixing the exact boundary where the mouth of a river terminates and the sea begins, has been illustrated by various cases; and if the question be considered in the abstract, the difficulties of laying down an exact definition, applicable to all cases, appear to increase (*f*). A variety of circumstances, varying with the locality, had to be taken into

(*e*) Balfour's Practicks, p. 544; Bankton, i., 574; Stair, 2. 3. 70; Ersk. 2. 6. 15.

(*f*) The question, in order to its solution, might be considered under these several heads—(1.) Jurisdiction of harbour or pilotage authorities. (2.) Jurisdiction of Admiralty Court. (3.) Construction of fishery acts relating to rivers. (4.) International law relating to boundaries of national territory. (5.) Fishery treaties. (6.) The proportion of the saline ingredient of the water, and its comparative density. (7.) The presence or absence of marine animals, plants, and other natural objects. (8.) The strength of the salt water stream as against the fresh water stream. The result, however, of a consideration of all these subjects is, that there is nothing to serve as a guide applicable to all cases.

consideration, so that the result, in one case, would be but little guide towards a sound conclusion in another. The rule, accordingly, was fixed, that each case, as it arose, must be decided on its own merits; and the question was therefore submitted to the verdict of a jury, whether the nets to which the litigation related were or were not 'in a situation pro-'hibited by statute' (*g*). For example, it was decided in a case occurring in 1812, that the prohibition of the statutes, as applicable to the Tay, extended at least as far down as the Drumly Sands (*h*); and in 1826 it was decided, in the same case, that the prohibitions did not extend to the sea. The question of the boundary line was also raised in regard to the fishings in the Firth of Cromarty (*i*), and to those in the Firth of Dornoch (*k*). In both of these cases negative rules were laid down by the House of Lords; and the only point which they can be said to have decided is, that each case was to be determined by the verdict of a jury (*l*). The question, however, of the boundary line can now, however, be no longer a matter of doubt; for, by the Act of 1862, the commissioners thereby appointed are empowered, in the case of every estuary and river in Scotland, to fix the line which separates the estuary from the sea (*m*).

(*g*) The usual form of issue will be found at p. 593, *et seq. Macfarlane on Issues.*

(*h*) *Duke of Atholl* v. *Maule*, 7 March 1812, F. C., 5 Dow 282. Previous to the bye-law fixing the boundary, fixed engines were not allowed within Broomness Point, in Forfarshire, and Tansmuir Point, in Fifeshire.

(*i*) *Mackenzie* v. *Horne*, 28 March 1837; 15 S. 894; 10 July 1838; 16 S. 1286; 4 Maclean and Robinson's App. 977. This case decided that the absence or prevalence of salt water is not the thing to be looked to in determining whether the situation is prohibited by statute.

(*k*) *Ross* v. *D. of Sutherland*, 23 Jan. 1844, 6 D. 425; 3 Bell's App. 315. This case decided that the statutory prohibitions are not limited to the space between high and low water mark, but that the case is to be decided by all the circumstances taken together. In *Carnegie* v. *Ross' Trs.*, 17 Jan. 1829, 7 S. 284, the question was remitted to an engineer to report on the nature of the locality.

(*l*) The tendency of the decisions seems to have been to extend the prohibition to every situation not in the open sea.

(*m*) 25 & 26 Vict. c. 97 § 6. For bye-laws defining the limits of all the salmon rivers in Scotland, see Appendix. The word estuary, in the Act of 1862, may be considered as equivalent to 'the situations prohibited by the old Acts.'

The situation in which cruives are forbidden or permitted will be considered separately, and also the law which regulates the use of fixed engines on the Solway or on the Tweed.

The Acts containing prohibitions of fixed engines within certain limits are still in force, and their prohibitory clauses have been in no way superseded or added to by the general Act of 1862. The prohibitions existing at that date are simply adopted and confirmed by section 10; and the sole effect of the statute in this respect is to define, or to empower commissioners to define, the exact limits to which, in every river in Scotland, the ancient prohibitions are to apply. The statute accordingly is not complete in itself as prohibitory of fixed engines, but must be read in conjunction with the old Acts (*n*). The commissioners are only empowered to fix and define these limits in so far as the same may not be already fixed by statute, or by judicial decision. The only instance, however, in which their powers appear to be thus excluded, is in the case of the Tweed, the mouth of which is specially defined in the Act of 1859, and which is not in general subjected to the provisions of the Act of 1862.

Stake Nets and Bag Nets.—These engines are not expressly prohibited by the old Acts in the situations therein referred to; but the words used, especially in the Act 1469 c. 38, evidently comprehend engines of that description, and that they do so has been expressly decided (*o*). The modern stake net, or bag

(*n*) The Act of 1862 in fact left the question of fixed engines almost untouched; it simply declared that no mode of fishing should by the Act be made legal, which was, or might have been, illegal before; 'in other words, left the question of fixed 'nets as open as before for litigation, as well as for legislation.'

The prohibitions and penalties in §§ 6 and 11 of the Act, against obstructing and impeding the passage of salmon, do not apply to stake nets—obstructions to the passage of salmon differ from illegal means of catching them.

(*o*) *Duke of Athole* v. *Maule*, 7 March 1812, 16 F. C. 537; 5 Dow, 282.

net, is indeed a mode of fishing of very recent invention (*p*); although it is probable that nets or yairs of somewhat similar construction were in use at an early period (*q*). There are various decisions in which stake nets, or similar contrivances, have been declared illegal in rivers and estuaries. In the case of *Sir J. Colquhoun* v. *Duke of Montrose* (*r*), stakes were fixed in the channel of the river, and nets were fastened to the stakes, thus making stake nets. The Court 'found that the 'mode of fishing claimed by Sir J. Colquhoun in the mouth 'of the river Leven, by means of stented nets, and stobs or 'stakes, stretching nearly across the mouth of the said river, 'as described by him in his memorial to the Court, being of 'a very destructive nature, and impossible to be regulated in 'the manner of a cruive fishing, is illegal, and cannot be sanc-'tioned by any usage.' In the case of *The Earl of Kinnoul* v. *Hunter* (*s*), the fishing was carried on by means of a large enclosure, made by nets stretched upon stakes, and so contrived as to open and shut with the tide, keeping in all the salmon which might have entered the enclosure during the flowing of the tide; besides which, a line of netting, of considerable length, running obliquely down the river, served to direct the fish to the enclosure, as well as to take the fish

(*p*) Stake nets seem to have been introduced into Aberdeenshire, Forfarshire, and Kincardineshire about 1821–23, though they were not brought to perfection till about 1832. Previous to 1828 they were very little used, at least in their modern form; but after the decision in that year (*Kintore* v. *Forbes*), declaring them to be not prohibited on the open coast, they became general all over Scotland. On the Solway they appear to have been in use at a much earlier period, 1788. Bag nets were not introduced till about 1829. They are applicable to places, rocky coasts, etc., where no other kind of fishing can be carried on. They float, and consequently can be worked in places where the water is too deep for stake nets; they are sometimes attached to the outside of stake nets; and when the coast is rocky and precipitous, and the water, even at low tide, is of considerable depth, they are attached by ropes to ring-bolts fixed in the rocks below high water mark. The seaward end of the net is fixed to buoys anchored to large stones.

(*q*) Hector Boece mentions fixed machinery as being in use on the sea coast as early as the fifteenth century.

(*r*) 1804, M. 14283; 4 Paton 221.

(*s*) 1802, M. 14301.

coming down with the ebb tide. This was also a case of what may be called a stake net, and the Court held it to be illegal. In the case of *The Duke of Athole* v. *Maule* (*t*), nets were stretched upon stakes fixed in the river, and the Court found that the defender had no right to erect or use yairs, stake nets, or other machinery of the same nature, for the purpose of catching salmon in the locality in question. In the case of *Carnegie* v. *Ross' Trustees* (*u*), stake nets were interdicted as being situated in the mouth of a river (*x*). In the case of *Graham* v. *Dixon* (*y*), it was decided that a right to fish by means of a yair does not authorize the grantee to alter the contrivance into a stake net.

But while the above cases have settled the law that stake nets are illegal in rivers and estuaries, it has been decided that they are not prohibited on the proper shore of the sea (*z*), in which locality fishing may be carried on by any method whatsoever; for, as the prohibitory statutes do not affect these localities, the common law principle must prevail, according to which any man is entitled to make what use he likes of his own.

Stake and bag nets in, and at the mouth of the river Tweed, are specially regulated by the Tweed Acts, and the limits within which they are legal are there specially defined (*a*). Questions regarding fixed engines in the Solway are discussed elsewhere (Chapter XVII.).

(*t*) 7 March 1812, 16 F. C. 537; Buchanan's *Remarkable Cases*, p. 245; 5 Dow's App. 282 (there called *Dalgleish* v. *Duke of Athole*).

(*u*) 17 Jan. 1829, 7 S. 284; *Duke of Athole* v. *Wedderburn*, 16 Dec. 1826, 5 S. 153. There are other cases noted hereafter which prohibit fixed engines of various descriptions, but those above quoted refer more especially to *stake nets*.

(*x*) In calculating the rental of an entailed estate, out of which provisions are to be paid, the rent of stake nets placed within the boundary line of an estuary as drawn by the commissioners, must not be included. Such rents are of course precarious, and the income should be calculated as if the nets were worked in a legal manner.

(*y*) 1816, 6 Paton 163.

(*z*) *Earl of Kintore* v. *Forbes*, 31 May 1826, 4 S. 641; House of Lords, 1828, 3 W. & S. 261; *Duchess of Sutherland* v. *Gilchrist*, 11 June 1836, 14 S. 959.

(*a*) *Vide infra*, Chapter XVI.

Fixed Engines in general.—The series of statutes above referred to, which were passed for the preservation of the breed of salmon, were solely prohibitory, and, though they prescribe no specific mode of fishing, the general result of them is, that, except on the shore of the open sea, no fixed engine at all (with the exception of cruives in certain localities) may be used. The decisions, indeed, by which these statutes have been construed, and in pronouncing which the Court have taken upon themselves certainly a wider latitude than is usual in the interpretation and application of prohibitory enactments (*b*), carry the rule farther, and conduce to the general result, that net and coble (and certain minor methods) are alone recognized as legal. The effect of the judgments is to declare, that anything used for the purpose of obstructing the passage of the fish is illegal, and also that the right of fishing must not be exercised by means of fixed or standing machinery of any kind. And in order to fulfil the condition of fixity which stamps the engines as illegal, it is not necessary that it be a permanent fixture, but it is sufficient that it should be fixed or motionless, even for a time, in the water. Lord Westbury has said, 'If I were asked to define the con-'clusion which I should derive from the statutes and the deci-'sions, it would be this, that it was not legal to fish with a 'net unless when the net continued in the hand of the fisher-'man. The net must not quit the hand, and the net must be 'in motion during the operation of fishing' (*c*). It has been contended that the effect of the statutes and decisions being to limit the legal modes of fishing to fishing by net and coble,

(*b*) An opinion has been expressed by the Lord Chancellor (Westbury), that the decision of the Court are consistent with the general principles of the statutes, and in conformity with the law, and that the judges of Scotland were justified in their mode of interpretation, and in the large and particular discretion which they have used in construing the statutes. *Hay* v. *Magistrates of Perth*, 1863, 4 Macq. 535. In a previous case (*Johnston* v. *Stotts*, 1802, 4 Paton's App. 274), Lord Eldon seems to have thought that the various judgments of the Court were hardly authorized by the terms of the statutes.

(*c*) *Hay* v. *Magistrates of Perth*, *supra*.

that it must furthermore be confined to fishing to net and coble *in the ordinary way*. This contention, which would strictly limit the use to the method now practised, and which would preclude the introduction of any improvement whatever, limiting the mode of fishing to that which was practised centuries ago, has been expressly negatived by the House of Lords. It has been decided, that there is no foundation for such a narrow interpretation; and the inference is, that improvements will be admitted either upon the shape of the net, or the character of the boat, or the mode of propelling the boat. In the case referred to, which is the most recent and the most valuable authority as to the methods in which fishing may be carried on, a method of fishing called the Bermoncy boat, in which a second coble was used, was held to be legal (*d*). The proper conclusion seems to be, and it was so stated by the Lord Chancellor, that 'net and coble,' though nothing essentially differing from it, or of a more fixed character than it, will be permitted, is merely symbolical of the proper legal form of fishing, 'that legal form of fishing being by a net which is 'not to be fixed or stented, or in any manner settled, or made 'permanent in the river, but is to be used by the hand, and 'is not to quit the hand, but is to be kept in motion during

(*d*) The ordinary method of fishing by net and coble is in this fashion:—The coble goes out with the net in it; the fisherman in the coble begins to drop or pay out the net at any point he chooses, embracing within his sweep as much of the stream as possible, or the whole breadth of the stream, if he can do so. A person on shore holds a rope attached to one end of the net, and that rope is of such length as is suitable for drawing the net; the man with the coble makes a sweep, and arrives at a point further down the river, and in the meantime the person who had hold of the rope at the point from where the coble started, makes his way, by walking along the bank of the river, or in the river, till he reaches the point at which the net is to be drawn on shore, and then both ends of the net are drawn in.

By means of the Bermoncy boat, this method of fishing is made more effectual in certain localities, and in certain states of the tide. According to this plan, the man who holds the end of the net at the starting point, and goes down with it to the hauling point, instead of walking on the bank, or wading in the stream, performs the same operation in a boat, and the net is thereby enabled to be carried further out and into deeper water than by the ordinary method. The second coble *facilitates* (which is perfectly allowable) the use of the net, but it does not interfere with its action or *arrest its motion* (which is not allowable).

'the operation of fishing.' The mere name of 'net and coble,' is, of course, not sufficient to imply legality, for it is evident that this method might be conducted in such a way as to be an evasion of the law.

With regard to the general prohibitions of fixed machinery, Lord Corehouse, in an unreported decision (*e*), remarked, 'It may on the whole be considered to be settled law, that 'with the exception of cruives and yairs, which require a 'special grant, every barrier or permanent erection placed in 'the channel of a river to obstruct salmon in ascending the 'stream, is illegal, whether the immediate object is to pre-'vent their passage altogether, or to impede or delay it, so 'that they may be more easily taken below. Some of the 'statutes regarding this subject are loosely and imperfectly 'expressed, applying in words only to the illegal modes of 'fishing practised at their dates. But the evident object of 'all of them is that which has now been stated, and it has 'been recognized as such in various cases, and effect given 'to the statutes accordingly. To mention one example, though 'none of the statutes is expressly applicable to stake nets, 'which are essentially different from the old yairs, the Court 'had no difficulty in finding that those contrivances, when 'placed in rivers, fell under the prohibitions. Indeed, the 'general rule has been repeatedly laid down, that fishing by 'means of any fixed machinery or apparatus whatever, or in 'any way, except by net and coble, and the minor methods, 'is illegal. The construction which the Court has put upon 'these statutes, is founded on a well known principle of law. 'All remedial Acts of Parliament, and particularly Acts for the 'benefit of the community, are liberally interpreted, that the 'mischief to be guarded against may be prevented, and the 'remedy introduced may be made effectual for that purpose. 'If the statutes in question were not so interpreted, their 'object would plainly be defeated by the invention of new

(*e*) *Grant* v. *M'William*, 1846.

'modes of fishing, not within the letter, but contrary to the 'spirit of their provisions; and indeed, the Reports are filled 'with cases affording examples of such devices, resorted to, 'one after another, but always without success, when chal-'lenged in a court of law.'

Obstructions, whether partial or total, have always been found to fall under the prohibitions: and no kind of barrier to the progress of the fish, whether it rise above the surface of the water or not, will be permitted (*f*). It has even been found that placing a row of loose stones, not of any considerable size, in the bed of a river, not across it, but merely upon the edge of a pool to facilitate fishing by net and coble, is illegal, though net and coble is the ordinary and legal mode of fishing (*g*). The prohibitions extend also to all practices, either destructive to the breed of salmon or so noxious to their tastes and instincts as to deter them from ascending higher than suits the interests of the party using such practices; *e.g.* placing a sheet covered with pitch in the stream is illegal.

It has often been alleged in defence of particular modes of fishing, that from the nature of the channel of the river or other causes, no other mode of fishing than the one objected to is practicable, that it has been used immemorially, and that the ordinary mode of fishing by net and coble would, in the circumstances of the locality, be unprofitable. Such pretexts have, however, been uniformly disregarded, with the single exception of the case of *Robertson* v. *Mackenzie* (*h*), a decision which, in subsequent cases, has been always disapproved of. Whether the established practice of the Court on this point, in prohibiting what may be the only practicable method of fishing, is in accordance with the best interests of

(*f*) The term 'fixed engines' is less strictly construed in England. A net fixed to the bank by a stone, and stationary, was held not to come within the prohibition. *Thomas* v. *Jones*, 29 Nov. 1864, 11 Law Times (N. S.) 450.

(*g*) *Copland's Trustees* v. *Maxwell*, 13 June 1810, F. C.

(*h*) 1750, M. 14290.

the community, and whether it is likely to be persevered in, is a question not now to be discussed.

The statutes prohibiting certain modes of fishing have been framed, not for the purpose of regulating the rights of the proprietors *inter se*, but must be considered as affecting the interests of the community at large, and no contract, therefore, even though it is entered into by the whole of the propretors interested in a river, by which a mode of fishing otherwise illegal, is agreed to be established, would be considered binding either on the parties or their representatives.

In the case of *The Duke of Queensberry* v. *The Marquis of Annandale* (*i*), the stenting or straighting of nets, either entirely across a river or placed alternately on either side, and overlapping each other, so as to obstruct the fish from getting up the river, was found to be illegal and prohibited. The nets had stones at the bottom and cork at the top, and rose with the tide to their breadth or deepness; sometimes the nets were stretched entirely across the river from beach to beach. A rope, with bones fixed to it was also stretched across the river, to frighten and deter the fish from running up the river, and leisters with long shafts were fixed in a bridge over the river. The Court found 'that although the 'Marquis of Annandale, the inferior heritor, and his tenants, 'have right to use all legal engines and methods for catching 'the fish, conform to law and to their possession, yet they 'have no right, either in time of actual fishing, or at any 'other time, to erect any engine or use any method, not for 'the purpose of catching fish, but for preventing or obstructing them from passing up the river,' it was therefore found 'that the methods used were 'illegal methods, intended 'for preventing or obstructing the fish from passing up the 'river, and are not only prejudicial to the superior heritors, 'but destructive of the fishing, and ought to be discontinued

(*i*) 1771, M. 14279. Stent nets were also prohibited in the case of *The Coble Fishers of the Don*, 1693, M. 14287.

'in time coming.' In the case of *Dirom* v. *Littles* (*k*), the use of *hang nets* was prohibited. The hang net was fixed by one extremity to the shore, and then drawn diagonally downwards across a smooth part of the river, and reaching more than half way across the stream; the other extremity of the net was left loose. The bottom of the net was sunk by pieces of lead, and the top was floated by corks, so as to make the net stand perpendicularly in the water, and when a fish came against it the net yielded, and the fish was caught by being entangled in it. The Court prohibited the defenders 'from 'erecting any engines or using any method, not for the pur-'poses of catching fish, but for obstructing or preventing 'them from passing up the river, and in particular, from 'using stent nets or hang nets of any sort or denomination.' In the case of *Sir J. Colquhoun* v. *The Duke of Montrose* (*l*), a mode of fishing by the assistance of nets stretched upon stobs or stakes fixed in the river, which detained the fish until they were caught below by means of draught nets, was prohibited. In the same case, nets similarly placed, but kept floating by corks, and which caught the fish by entangling them in the meshes, and nets so placed as to admit the fish into an enclosure of stakes and then capture them, were also prohibited. The Court found 'that the mode of fishing 'claimed by Sir J. Colquhoun in the mouth of the river 'Leven by means of stented nets and stobs and stakes 'stretching nearly across the mouth of the said river, being 'of a very destructive nature, and impossible to be regulated 'in the manner of a cruive fishing, is illegal, and cannot be 'sanctioned by any usage.' In the case of *Erskine* v. *Magistrates of Stirling* (*m*), it was found that *stoop nets*, which are a kind of bag fixed on a triangular frame, at the end of a long pole, which is kept motionless in the water till a fish enters it,

(*k*) 1797, M. 14282.
(*l*) 1793, M. 12827; 4 Paton's App. 221; 1804, M. 14283.
(*m*) 1763, M. 14268.

are illegal, as being of the same nature as pock nets and herry-water nets, which are prohibited by a special Act (1698 c. 3) for the river Forth. In the case of *The Earl of Kinnoul* v. *Hunter* (*n*), a mode of fishing was used, consisting of an enclosure containing a space of about fifteen acres, which was made by stakes and netting, and was contrived in such a manner as to open when the tide flowed and shut when it ebbed, keeping in all the salmon which entered it during the flow of the tide. Besides this, a line of netting, 812 yards in length, running obliquely down the river, served to direct the fish to the enclosure as well as to take the fish coming down with the ebb tide. The construction, which appears to have been very like a modern stake net, was held to be illegal. In the case of *Cunningham* v. *Taylor* (*o*), the mode of fishing objected to, was by means of a check dyke erected behind a milldam dyke, situated nearly in the middle of the stream and operating as a weir. The erection was held to be illegal, as being a contravention of the statutes. In the case of *The Earl of Fife* v. *Gordon* (*p*), the mode of fishing was by means of a dyke of loose stones across the channel of the river, in the centre of which was placed a basket with its mouth up the river, into which the fish were driven and caught. The Court found the method to be illegal. In the case of the *Duke of Athole* v. *Maule* (*q*), fishing by means of an apparatus consisting 'of an immense sheet of coarse net-'work, with meshes of about three inches in diameter, 'stretched upon stakes fixed into the ground at convenient 'distances, the fish being captured in wide enclosures,' was found illegal. In the case of *Forbes* v. *Smith* (*r*), the Court

(*n*) 1802, M. 14301.

(*o*) 1804, Hume 715.

(*p*) 1807, M., *voce* Salmon Fishing, App. No. 2.

(*q*) 7 March 1812, F. C.; Buchanan's *Remarkable Cases*, p. 254; 5 Dow's App. 282.

(*r*) 19 Feb. 1824, 2 S. 721; 1 W. & S. 583; *Trotter* v. *Hume*, 1757, M. 12798. This last case shows that, with regard to erections connected with the fishing, the rights of a party who is a proprietor both of the lands and of the fishings *ex adverso* of the lands, are very different from those of one who is proprietor of the fishings only.

determined that no erection or fixture of any kind in the bed or bank of a river which has the effect of frightening the fish, can be permitted; and if the property of the bank is held by another, the proprietor of the fishing is not entitled to make any erection whatever thereon. In the case of *Graham* v. *Dixon* (*s*) it was decided that a right to fish by means of yairs does not authorize the grantee in altering the contrivance into a stake net. In the case of *The Duke of Athole* v. *Wedderburn* (*t*), certain descriptions of nets were used, called toot nets, stage nets, and tent nets, which were alleged to be of the nature of stake nets; and in the case of *Mackenzie* v. *Houston* (*u*), a fixed or stent net, to which bags or traps were attached, the whole rendered immoveable by anchors across the channel, so as to prevent the passage of fish. The Court, in prohibiting them, appears to have granted interdict in both these cases against fishing 'by any other mode 'than the ordinary way of net and coble.' It is probable, however, that the interdict was limited to the means used; and it has now been decided, as previously stated, that the mode of fishing cannot be so far restricted. The same observation applies to the case of *Lord Gray* v. *Sime* (*x*), where an interdict in the same general terms was granted, the mode of fishing there used being sole nets, or poke nets, one end of which was fixed to the shore, and the other moored in the water. In the case of *Magistrates of Dumbarton* v. *Graham* (*y*), it was found that a yair to which a proprietor had right for the purpose of catching herrings and white fish, could not be converted into a stake net or used for the purpose of taking salmon. Yairs (*z*) for catching salmon, even though held under an express grant from the Crown, are illegal where the

(*s*) 1816, 6 Paton 163.
(*t*) 16 Dec. 1826, 5 S. 153.
(*u*) 25 May 1830, 8 S. 796.
(*x*) 9 July 1835, 13 S. 1089.
(*y*) 16 Jan. 1813, F. C. p. 59, affirmed on appeal, 19 June 1816. The judgment in this case is explained in *Fraser* v. *Duff*, 13 Nov. 1829, 8 S. 14.
(*z*) Yairs are sometimes called zairs, weirs, wears, *piscaria stagna*, and sometimes fish dams. The word weirs first occurs in the Act 1457, c. 86. The term *fish dams* is used in the Act 1563, c. 68.

sea ebbs and flows, and, like all other illegal methods, no length of prescriptive use will sanction them (*a*). Masking nets, tug nets, feith nets, rigtails, and bob nets, being of the nature of fixed machinery, are prohibited (*b*).

Stell nets seem nowhere to have been expressly prohibited under that name; but as an essential element in this method of fishing is that the nets should, for a time at least, be kept motionless in the water, either held in the hand of the fisherman or secured by a stone or anchor, there is little doubt that it is within the scope of the prohibitions (*c*). In two different cases (*d*), interdict has been sought against fishing by means of stell nets, but in neither of them, for technical reasons, was any decision pronounced. *Cairn nets*, being of the nature of fixed engines, are illegal. The erection of the cairn, or mound of stones, which is built out into the channel of the river, is illegal, as forming an obstruction in some measure to the passage of the salmon, and the net which is fixed to the end of the cairn, is also illegal; this method of fishing is struck at both by the older statutes and by the recent Act of 1852, and in the Tweed it is specially prohibited by the Act of 1857 (*e*). Cairn nets seem to be almost precisely the kind of

(*a*) *Mackenzie* v. *Renton*, 12 June 1840, 2 D. 1078.

(*b*) A table of illegal modes of fishing and penalties inflicted, is given in Ross' Laws of Hunting and Hawking, p. 55 and 73; but the general description of what constitutes illegality, makes it unnecessary to go into fuller details.

(*c*) Stelling is practised in a variety of ways in different parts of Scotland, but the usual method seems to be similar to net and coble fishing, with this essential distinction, that the net, instead of being swept continuously to the shore and immediately drawn in, is held by a man stationed at the outer end till a fish is felt or seen to strike the net, when it is drawn in and the fish captured. The method of fishing interdicted in *Gray* v. *Sime*, 9 July 1835, 13 S. 1089, seems to have been very similar to stelling.

(*d*) *Lord Lovat* v. *Baillie*, 1862, unreported. The petition was dismissed on the ground that the interdict craved was not sufficiently specified in the prayer, without reference to the statement of facts, conform to A. S. 24, Dec. 1838. *Lovat* v. *Mackenzie and Tait*, 1865, unreported. Interdict was not granted, the case not being sufficiently stated on record.

(*e*) See *infra*. Previous to this Act, cairn nets were in constant use on the Tweed, and by the decision in *Ramsay* v. *Duke of Roxburghe*, 1850, 7 Bell's App. 248, were recognized as legal, or at least as not sufficiently illegal to prevent the use of them for the prescriptive period being effectual to complete a title.

net described and prohibited in the case of *Dirom* v. *Little* (*f*), although in that case the end of the net next the shore was not fixed to any erection projected into the water, but on the shore itself. This difference, however, would not affect their legality, both being fixed engines; the cairn nets, indeed, are often fixed on the rocks on the banks, instead of on artificial mounds of stones. In the case of *Carnegy* v. *Magistrates of Brechin* (*g*), it was decided that placing sheeting upon cruives, or using any other means of frightening the fish and deterring them from running up the river, is illegal.

Dam Dykes.—Dam dykes are of course legal, when used for the purposes of mills, but they must be constructed in accordance with the rules laid down by the Act 1696 c. 33, and the bye-law of the commissioners acting under the Act of 1862 (*h*). It will be observed that the commissioners' bye-law (which is printed in the Appendix) leaves existing mill dams, etc., as they are; and however obstructive they may be to the passage of the fish, no alteration in them is required, until a reconstruction is undertaken by the proprietor; then, and then only, must the regulations of the bye-law be given effect to. The Act in this respect differs from the regulations which affect the Tweed. In erecting new mill dams, etc., or reconstructing old ones, the extra expense, if any, of conforming to the regulations of the bye-law, must, of course, be borne by the proprietor or occupier, and not by the district board.

The statute 1696 c. 33, ordains that there shall be a constant slop in the mid-stream of each mill dam dyke, as wide as convenient without prejudicing the going of the mill (*i*), and 'discharges all fishing at mill dam dikes with nets

(*f*) 1797, M. 14282.

(*g*) 1704, M. 14288.

(*h*) 25 & 26 Vict c. 97 § 6, and bye-laws. See Appendix. The construction of dam dykes was formerly wholly regulated by the Act 1696 c. 33.

(*i*) *Munro* v. *Munro*, 7 July 1846, 8 D. 1029.

'stented or otherways, or any other engines whatsoever' (*k*). A method of fishing by means of a check dyke, erected behind a mill dam dyke, situated nearly in the middle of a stream, and operating as a weir, was found to be illegal under the statute (*l*). But fishing near a dam dyke, but not by means of it, and not in connection with it, does not fall under the prohibition of the statute. It has been decided that the Act prohibits fishing *at* dam dykes, but that 'it would be too ex-'tensive an interpretation to include under it a prohibition of 'all fishings near dam dykes—that the statute was directed 'against those cases where the dam dykes were immediately 'subservient to, or made use of in the fishings' (*m*). In the case of *Robertson* v. *Mackenzie and Graham* (*n*), fishing by means of a dam dyke was permitted, 'in respect of the 'charter and Act of Parliament in favour of the defenders 'and their authors, produced, and of the immemorial posses-'sion had by them in virtue thereof.' This decision, however, stands alone, and appears to be altogether indefensible. A proprietor of salmon fishing is entitled to sue for the removal of an obstructive dam dyke, though others would remain, equally injurious to the fishing (*o*). With regard to the height of cruive dykes or mill dam dykes, there appears to be no particular statutory direction; and it is obvious that if the dyke is to be effectual, the height must depend upon the depth of the stream. In one case (*p*) it was argued that the

(*k*) It has been decided that this Act applies to the Tweed, *Duke of Roxburghe* v. *Earl of Home and Tankerville*, 1774, 2 Paton's App. 358.

(*l*) *Cunningham* v. *Taylor*, 1804, Hume, 715; *Forbes* v. *Leys, Masson & Co.*, 9 July 1831, 9 S. 933, 5 W. and S. 384.

(*m*) *Copland's Trustees* v. *Maxwell*, 13 June 1810, F. C.

(*n*) 1750, M. 14290.

(*o*) *Forbes* v. *Leys, Mason & Co.*, 9 July 1831, 9 S. 933, 5 W. & S. 384. It was also decided in *Earl of Home* v. *Duke of Roxburghe*, 1774, 2 Paton, 358, that a statute imposing a penalty for preventing fish from ascending a river supports an action for the purpose of having the obstruction removed; and the operation of such a statute is not limited to the words of the preamble.

(*p*) *Heritors of Don* v. *Town of Aberdeen*, 1665, M. 10840. See also *Magistrates of Dumfries* v. *Heritors of Nith*, 1705, M. 12776.

dyke ought to be no higher than the water in its ordinary course, but the Court, on the ground that there was no fixed rule regulating the height, and that there had been prescriptive possession of forty years, 'that therefore the same should 'be *uti possidebantur*, no higher than the old cruives.' In a subsequent case, the Court decided that the cruive dyke ought to be only a foot and a half above the water at its ordinary height (*q*). Millowners must use their right to dam back the water in such a way as not to injure the salmon fishing of upper heritors as anciently enjoyed, and must make any constructions necessary to prevent injury, at their own expense. Where it is obvious, from the structure of the dam dyke, that it is used as much to serve the purpose of fishing as to supply the mill, the Court will require it to be altered so as not to obstruct the progress of the fish to the upper waters; and the service of the mill will not be permitted to be exercised emulously or negligently, in prejudice of the rights of fishing (*r*).

The general result of the statutes and decisions is, that all nets which are permanently or temporarily fixed, and all erections, permanent or temporary (with the exception of cruives possessed on a valid title), which form even a partial obstruction, or tend to frighten the fish, and are fixed either right across the river, or at the side of it, are illegal. No length of possession will legalize a method of fishing originally illegal, or authorise its continuance. Ingenuity might suggest various new and effectual modes of destroying salmon applicable to the different situations in which the fish are to be found, and which might not be expressly prohibited by any statute or decision, but no such methods will be permitted if they come within the description of prohibited engines before defined; and it is no defence to an action for the removal of such contrivances, that the right to use them

(*q*) *Falconer* v. *Scott*, 1701, M. 14288.
(*r*) *Arbuthnot* v. *Scott*, 1802, 4 Paton, 337; *Scott* v. *Gillies*, 1813; 5 Paton, 750.

has been expressly conveyed by grant, or that they have been in use for the prescriptive period, or for time immemorial (*s*). Damages may be recovered for loss caused by the use of illegal machinery, or by the use of legal machinery in an illegal manner.

Fixed nets being illegal in estuaries, only when used for catching salmon, questions of nicety may arise as to whether particular nets come within the prohibitions. If salmon be captured in nets which are used for white fishing in an estuary, some difficulty may arise regarding the liability of the fishermen to the statutory penalties. If the nets, whatever be their nature, be set purposely for the capture of salmon, the fine is of course incurred; and the same will hold, though the nets be chiefly for the purpose of capturing flounders or other white fish, if there be a probability or expectation on the part of the fishermen, of taking salmon in them, and if the salmon, when caught, be appropriated. On the other hand, if the primary purpose of the nets be distinctly the capture of white fish, and the taking of salmon therein be merely an accidental occurrence, and if the salmon, when captured, be returned to the water, or surrendered to the authorities, the circumstance will not be considered as a contravention of the Act. The names and descriptions of nets, as well as the manner of their use, are so various, and the circumstances under which salmon may be captured therein, differ so endlessly, that no fixed rule can be laid down as to what shall be considered a contravention of the Act. The circumstances of each particular case, the character of the net, and the conduct of the accused, are the elements to be considered in arriving at a conclusion.

(*s*) *Sir J. Colquhoun* v. *Magistrates of Dumbarton*, 1793, M. 12827; *Earl of Fife* v. *Duke of Gordon*, 1807, M. 'Salmon Fishing,' App. No. 2. The principle established in this last mentioned case may be considered as over-ruling the decision in *Robertson* v. *Graham*, 1750, M. 14290. Novel contrivances, if ingeniously constructed, may be made far more destructive to the fish than stake nets and cruives, for the use of the latter is strictly regulated by law.

CRUIVES (*t*).

Title to Cruive Fishing.—The right of fishing for salmon by means of cruives is a separate and distinct right, and differs from the right of salmon fishing by other methods, not only in the manner in which the right may be exercised, but in the title which is necessary to constitute the right. Generally speaking, a grant of salmon fishing confers upon the grantee the right of fishing by any legal method; but there is an exception to this rule (arising probably from jealousy at what is considered to be a very pernicious device) (*u*) in the case of cruives,—a right to which is not carried by a general grant of salmon fishing, but requires an express conveyance of cruive fishing (*x*), or prescriptive possession of cruive fishing, following upon a general grant (*y*). The right of cruive fishing is considered to be so distinct in law from other methods of fishing for salmon, that where the general right of salmon fishing in a particular locality has been granted to one person, the crown may grant the right of cruive fishing in the same locality to another individual. This point has not been expressly decided; but though it might be supposed that the crown, in granting a general right of salmon fishing, divested itself totally of the whole

(*t*) *Yairs* (see note (*z*), p. 163 *ante*) seem to fall under the same law as cruives; but as the use of these engines in fresh waters has fallen entirely into disuse, it is needless to advert to them further. Even where express grants exist of fishing by means of yairs, it is probable that the right has fallen into abeyance by desuetude, and it is not in accordance with modern policy to grant such rights of new. Yairs were enclosures built round with stone, or timber, or close wicker work, which stagnates the water within the space, and prevents the passage of the fish, and confines them therein till they are taken out, unless they can find their way out by the tortuous and narrow passage through which they have entered. The modern stake nets used in the sea are somewhat similar in construction, though by no means identical.

(*u*) The necessity for a special grant, may arise from the circumstance, that this method of fishing is an encroachment upon the channel itself. Bankton, i. 575.

(*x*) Bankton, i. 575; Ersk. 2. 6. 15; Stair 2. 3. 70.

(*y*) That a prescriptive title is sufficient, was decided by *The Heritors of Don* v. *Town of Aberdeen*, 1665, M. 10840; *Mag. of Inverness* v. *Duff*, 1775, M. 14257.

right of salmon fishing in that locality, the law seems to be in favour of viewing the right of cruive fishing as so distinct in its character as to remain, by implied reservation, with the crown, after a general grant of salmon fishing has been given out. The right of cruive fishing is certainly not included in a general grant; it certainly exists originally in the crown; and where it is not given out along with the general right, it must be held to remain with the crown, and at its disposal, to retain for its own use, or to convey by a charter to a subject. In the case of *Sir J. Grant* v. *The Duke of Gordon* (*z*), it was found that the possession by one party of a right of currach fishing was no bar to the crown's granting to another a right of cruive fishing within the same bounds; but the pure question did not arise in that case, because the right of the prior grantee was expressly limited to fishing by means of a currach. In a subsequent stage of the same case, however, the other proprietors of salmon fishings in other parts of the river objected to the use of cruives by the Duke of Gordon under an express grant from the crown, on the ground that it was *ultra vires* of the sovereign, after conveying away the whole salmon fishings in the river, to prejudice the rights of those grantees by a subsequent grant of cruive fishings to one of them. They argued, and probably with justice, that the erection of a cruive would be no more destructive of their interests if it was actually established within the bounds of their grants, than it would be to the superior and inferior heritors if erected in a separate locality. The objections, however, were repelled; and the admission of the objectors, that the establishment of a cruive fishing by subsequent grant, within the bounds of their general right, would not be more injurious than if it was placed outside their limits, may be used as an argument in favour of the validity of a subsequent grant in the same locality.

Neither an express grant from the crown, nor prescriptive

(*z*) 1778, M. 14297; 3 Paton, 679.

possession, will confer a right of cruive fishing in a locality where that method is illegal by statute (*a*). Cruive fishing, by its nature, is confined to one locality, and need not necessarily interfere with net fishing in the adjacent waters. The existence, in the same part of a river, of rights of cruive fishing and of net fishing, held by different individuals, does not partake of the nature of a common occupation of the stream; the rights are naturally distinct, and there seems no physical or legal objection to their conveyance under distinct grants to separate individuals.

Extent of Right.—The right of cruive fishing may be acquired by prescription, following either upon a title to salmon fishing in general, or on the more general charter *cum piscationibus*. When the right is established, it must be exercised according to use and wont, and cannot be extended to a wider or more effectual possession than *uti possidebantur*. In the case of *The Heritors of the Don* v. *Town of Aberdeen* (*b*), it was found that the town of Aberdeen having prescribed a right of cruive fishing by means of one cruive dyke, were not entitled to erect a second, but confining their right to one cruive dyke of the same dimensions, were entitled to transplant it to any locality within the bounds of their grant. When the right of cruive fishing is made the subject of special grant, the terms of the conveyance must regulate the extent of the right which is conveyed. The more general form is a conveyance of a general right of fishing with cruives within certain specified bounds, and in a case of this kind, where no restriction is imposed, there seems nothing to limit the number of engines which may be erected; but if following upon the general grant of cruive fishing there has been a possession for forty years restricted to one dyke, this is probably sufficient to prevent the grantee from any future extension

(*a*) *M'Kenzie* v. *Renton*, 12 June 1840, 2 D. 1078; *Duff* v. *Fraser*, 1831, 5 W.&S. 57.

(*b*) 1665, M. 10840.

in number. But general grants of cruive fishing usually bear 'according to use and wont,' and the grantee, in the exercise of his right, cannot go beyond this. Frequently an existing cruive dyke is made the subject of a specific grant, and where that cruive dyke has been used for forty years in a particular way, the grantee will not be entitled to make any alteration upon it so as to increase his own right, or diminish the right of his neighbours.

A right of cruive fishing includes the lesser method of rod fishing, or at least can be construed by possession to include it; but it is not sufficient, unless fortified by prescriptive possession of excluding, to debar the proprietor of the banks from exercising his right of fishing for trout (*c*). A right of cruive fishing includes also the right of net fishing; or at least, in the absence of a competing grant of net fishing, it can be so construed by possession; but if, as may occur, the right of net fishing in the same locality has been made the subject of a distinct grant to another individual, then the rights of neither party can be encroached on by the other.

Locality of Cruives.—Another peculiarity in the law relating to cruives is the locality in which they may be erected. The general rule, as we have seen above, is that all fixed engines are illegal in rivers and estuaries; but to this rule, as regards rivers at least, cruives form an exception. Under a special grant from the crown, cruives may be erected in rivers, but their exact locality is jealously guarded and circumscribed by statutes and decisions. The result of these statutes and decisions is, that cruives are legal from the source of a river down to the point where the tide at its highest point is per-

(*c*) *Forbes* v. *Earl of Kintore*, 31 May 1826, 4 S. 650 (656). In this case, in which the question was raised as to the right of a proprietor of a salmon cruive fishing to grant licences to fish with the rod on the bank of the proprietor of an estate not having a right of fishing, and to prevent that proprietor angling with the rod for trout on his own banks, the Court remitted the case to a jury to ascertain the state of possession.

ceptible, but that below that point down to the sea, they are illegal. If cruives could be used with profit by owners of salmon fishing on the proper shore of the sea, there seems to be nothing to interfere with their legality.

The statutes which more particularly apply to cruives appear to be—the Act 1318 c. 12 (Robert I.), which contains certain regulations concerning '*croas, vel piscarias, vel stagna, vel molendina, in aquis ubi ascendit mare et se retrahit, et ubi salmunculi vel smolti seu fria alterius generis piscium maris vel aquæ dulcis descendunt et ascendunt*': the Act 1424 c. 11 (James I.) (*d*), which enacts 'that all cruives and zaires set in 'fresh water, quhair the sea filles and ebbis, the quhilk 'destroyis the frie of all fisches, be destroyed and put awaie 'for ever mair:' the Act 1457 c. 34 or 86 (James II.), enacts that 'na man in smolt time set veschellis, crelyis, weris, or 'any uthir ingyne, to let the smoltis to pass to the see:' and the Act 1469 c. 13 or 38 (James III.), the object of which was 'the multiplicatioune of fische salmonde, grilsis and 'trowtis, quhilkis ar destroyit by cowpis, narrow mass, nettis 'and prinnis.' The next Act, 1477 c. 73 (James III.), directs, 'that the Act maid of before, be King James I., anent cruives 'set in waters be observed and keiped. The quhilk beires 'in effect that all cruves set in waters, quhair the sea fillis 'and ebbis, destroyis the frye of all fisches, be put away and 'destroyed for ever mair, notwithstanding any freedom or 'priviledge given in the contrair, under the pain of five pund 'of ilk cruve; and that they that has cruves in fresh waters, 'that they gar keip the laws anent Satterdaies slop and suffer 'them not to stand in forbidden time under the samin paine: 'and that ilk heck of the said cruves be three inch wide, as 'the auld statute requires, maid be King David, and that 'the mid streeme be left free to the space of six fute.' The Act 1488 (or 1489) c. 15 (James IV.), is a re-enactment of

(*d*) Renewed by 1427–8 c. 6 or 116, and 1429 c. 22 or 131.

the previous Acts regarding cruives with certain additional provisions—'that letters be written to all Schireffes, Baillies 'and Stewardes, to destroy, cast down, and put away all the 'cruives within their bounds incontinent without delay,' etc. The Act 1535 c. 16 & 17 (James V.), directs, that the Acts previously made 'anent the halding of cruives and fish-zairs 'be observed.' The Act of Queen Mary, 1563 c. 68, ratifies and approves the Act of 1488, and proceeds, 'It is statute 'and ordainit, that all cruives and fische dammis that war 'within salt watters quhair the sey ebbis and flowis, be all 'utterlie destroyit and put doune, alsweill they that pertenis 'to our soverane lord as uthers throw all the realme.' This Act also has the addition following, 'that is to say, that all 'cruives and zairs that are set of late upon sandes and 'schawls (*e*) far within the water, where they were not of 'before, that they be incontinent taen down and put away.' The Act 1579 c. 23 (or 89), and 1581 c. 111 (James VI.) (*f*), ratify and approve the Acts previously made 'anent the destruction of cruives and zairs,' etc., and ordain the same to have execution and effect in time coming. The statute 1685 c. 20 (James VII.), also confirms the previous enactments; and the Acts 1696 c. 23 and 1705 c. 11 to the same effect, complete the series (*g*).

The prohibition contained in these Acts, against placing cruives or yairs in waters, affected by the rise and fall of the tide, is obvious and rational. A cruive dyke, which at high tide is level with the surface of the water, would, on the ebbing of the tide, be so much above the surface of the water that salmon either could not pass at all, or could only do so

(*e*) In the case of *Earl of Kinnoul* v. *Hunter*, 1802 (M. 14301), fixed nets were prohibited in this position.

(*f*) The Act 1581 c. 111 appointed a special commission for the preservation of fisheries; but the statute is now in desuetude. *Stirling*, 1793, M. 14299.

(*g*) The prohibitory decisions before quoted, and which were directed against fixed engines of various descriptions, all proceeded upon the Acts which more especially referred to cruives and yairs. It is enough, therefore, to refer to them under this heading.

with the greatest difficulty. The regulation is also necessary to protect the salmon fry, which, on descending to the sea, are accustomed to delay for a considerable time, and in large numbers, near the mouth of the river, and in such a situation that a cruive or yair at low water would prove extremely destructive to them. In the case of yairs the prohibition was even more necessary, for, if they were placed in situations where the height of the water varied with the tide, the surrounding wall might be of such a height as to admit the fish over the top of it at all sides with the high water, and retain and capture them when the water receded.

Construction and Use of Cruives.—The construction and use of cruives, especially as regards the width of the hecks or openings, and the observance of the Saturday slop, or weekly close time, were strictly regulated by statutes and interpretative decisions (*h*); but as these matters are now regulated by bye-laws of the commissioners acting under the Salmon Fishery Act of 1862 (25 & 26 Vict. c. 97, § 6 (6)) and Continuation Acts (26 & 27 Vict. c. 50 and 27 & 28 Vict. c. 118) it is sufficient merely to mention the decisions. The following bye-law, which was issued by the commissioners, and ratified by the Home Secretary, has all the force of law and took effect from the 28th July 1865, the date of its publication in the Edinburgh Gazette:—

(*h*) *Fishers of Northesk* v. *Scott*, 1746, M. 14264; *Halkerton* v. *Scott*, 1769, M. 14276 and 14293; *Barclay* v. *Scott*, 1684, M. 14286; *Falconer* v. *Scott*, 1701, M. 14288; *Carnegy* v. *Magistrates of Brechin*, 1704, M. 14288; *Earl of Moray* v. *Callendar*, 1762, M. 14291; *Lord Banff* v. *Earl of Fife*, 1783, M. 14299; Stair, 2. 3. 70; Hutcheson's Justice of the Peace, ii. 588 *et seq.*; *Grant* v. *Duke of Gordon*, 1777, 5 Br. Supp. 447. The old enactment of Alexander (Balfour's Practicks, 544), requiring the mid stream to be left free for the space of six feet, or for a space, as the Act expresses it, 'in sa mekill that ane swine of thre zeir 'auld and weill fed is of lenth, and may turn him within it, in sic ane maner, that 'nather his grunzie nor his tail tuich ony of the sides of the cruives that are biggit 'on ilk side of the water,'—is now in desuetude. Bankton, i. 574; *Barclay* v. *Scott*, 1684, M. 14286; *Johnstone* v. *Stotts*, 4 P. 274; Stair, *ut supra*. The rule of the Saturday's slop of 1477 c. 73, is re-enacted by 9 Geo. IV. c. 39, § 7.

I. The upper surface of the sill of each cruive shall be not higher than twelve inches above the natural bed of the river where the cruive is placed, and in the event of the sill being placed any higher than the natural bed of the river there must be a paved floor or apron to it down stream, at least as wide as the cruive, having its lower end not higher than the natural level of the river, and having a slope not steeper than one in six; and otherwise, the cruives shall be so constructed as to afford a ready and easy passage for the fish during the annual and weekly close times.

II. No cruive shall be less at any part of it than four feet broad in the clear; provided that where an upright post is used to support the cruive, thereby dividing the width into two parts, the aggregate width exclusive of such post shall not be less than four feet.

III. The hecks or rails and inscales shall be capable of being removed from the cruive, and shall be removed during the annual close time. During the weekly close time the hecks or rails shall be removed, and the inscales shall either be removed or kept open for the space of four feet.

IV. The bars of the upper hecks or rails shall be placed perpendicularly, not less than three inches apart, and they shall not be more than two inches thick, and not more than four inches broad in the up and down way of the stream, and they shall have their edges rounded off, so that only one and a half inches in breadth of the whole thickness of two inches shall remain in the side of the hecks or rails in the up and down way of the stream.

V. The bars of the inscales shall not be of larger dimensions than those of the hecks or rails, and they shall not be less than two inches apart.

VI. Each side or half of the inscales shall not be less than three feet long for a cruive four feet wide in the clear, and shall be longer in the same proportion to any additional width of cruive. They shall be constructed so that the up stream ends cannot and shall not at any time approach nearer to each other than five inches.

VII. No net or other contrivance whatever shall be placed or used on or at any cruive, or structure connected with a cruive, for the purpose of catching fish, or for preventing their entry into or passing through the same; nor shall any device be employed to scare, deter, or obstruct fish from entering into or passing through any such cruive. But, notwithstanding anything herein contained, it shall be lawful to place a canvas cloth or a wooden blind or blinds over the heck or hecks of a cruive whilst the fish are being taken out of it, provided such cloth, blind or blinds, be not applied longer than fifteen minutes at a time, or oftener than six times in the course of twenty-four hours, and that when there are more cruives than one at the same dam only one cruive shall be covered by the cloth or blinds at the same time.

VIII. No cruive shall be so constructed, inclosed, roofed, or built over, or in any other manner hidden or fenced in, as to prevent persons duly authorized from inspecting the same at all times, and ascertaining whether the law is being duly complied with.

IX. No cruive shall be so altered as to create a greater obstruction to the free passage of fish than at present exists.

At the end of § 6 (25 & 26 Vict. c. 97), which empowers the commissioners to make these regulations, a proviso is inserted, 'that such regulations shall not interfere with any

'rights held, at the time of the passing of this Act, under 'royal grant or charter, or possessed for time immemorial.' This clause is of considerable importance as affecting regulations concerning other matters which the commissioners are empowered to regulate, and which constitute other sub-divisions of the same clause to which this proviso is appended; it may seriously affect, for instance, questions arising under the bye-law which the commissioners have issued for the regulation of mill dams and lades; but it is not easy to see how it can qualify in any way the preceding bye-law relating to cruives. That bye-law can apply only to cruives which are already in existence, for cruives are not permitted to be erected in any situation in which they have not been hitherto. An express charter from the crown of cruive fishing will of course give to the grantee a right to fish in that method, but it is not probable that any grants of fishing in this method will in future be granted by the crown. The destructiveness and improvidence of the custom has been amply demonstrated by experience, and it is tolerably certain that the principle, instead of being extended, will be subjected in future to all possible limitation.

Slight variations in the construction of cruives will be permitted, but not such as to prevent the regulations of the commissioners being applicable. A method of fishing by *doaches*, not exactly the same as, but similar to, cruive fishing, was subjected by the Court to the regulations which affect cruives (*k*); and in the same case it was observed by Lord Eldon, that the principle which the Court has adopted of modifying and explaining the statutory rules applicable to cruives, must be followed by the House of Lords in reviewing decisions of the Court of Session.

A cruive dyke must not obstruct the free use of floating timber down the stream, but the Court will impose restric-

(*k*) *Johnstone* v. *Stotts*, 1802, 4 Paton, 274.

tions on the upper heritors in their exercise of the right, so that it interfere as little as possible with the fishing by means of the dyke (*l*).

A right to eel cruives may be acquired by prescription, as part and pertinent of adjacent lands (*m*).

(*l*) *Duke of Gordon* v. *Grant*, 1781, M. 12820, 2 Paton, 582; *Murray* v. *Earl of Selkirk*, 1821, 1 S. 106.

(*m*) *Braid* v. *Douglas*, 24 Jan. 1800, F. C. xii. 355.

CHAPTER VIII.

CLOSE TIME—FOUL FISH.

AMONG the earliest regulations for the protection of the breed of salmon, was a provision for the observance of a close time, prohibiting the capture of the fish during certain periods of the year when they are engaged in spawning, or are out of season as an article of food. The first enactment which was passed with this object appears to be the statute of James I., 1424 c. 35, which enacts a close time extending from 'the Feast of the Assumption of our Ladie quhill the 'Feast of St Andrew in winter' (*a*); and the penalty for the breach of the statute is thus enacted, 'Quha sa ever be con-'vict of slauchter of salmonde in time forbidden be the law, 'he sall pay fourtie shillings for the unlaw, and at the third 'time, gif he be convict of sik trespasse, he sall tyne his life 'or then bye it' (*b*). The Acts 1457 c. 86; 1469 c. 37; 1503 c. 72; 1597 c. 261; 1600 c. 11 (*c*); 1696 c. 33; and

(*a*) According to the new style, from 15th August till 30th November. Stair, 2. 3. 70; Ersk. 2. 6. 15; Balfour's Practicks, p. 544; Hutcheson's Justice of the Peace, ii. 580.

(*b*) The following is said to have been the law of Kenneth III., who began to reign A.D. 1004:—'For the life of ane man, nine time twentie kye. For ane fute, 'ane marke. For ane tuth, twelve pennies. For ane wounde of the length of ane 'inch, twelve pennies. For ane wounde under the claiths, twelve pennies. For ane 'strake with steiked neif, twelve pennies. For an strake with the palme of the 'hand, for ilk finger, twelve pennies. For ane strake with the fute, fortie pennies. 'For the blude shed out of the head of ane Earle, nine kye,' etc., etc. *Reg. Maj.* 6. 4. c. 36.

(*c*) The Act 1600 c. 11, ordained the slaying of salmon in close time and foul fish at any time, to be punished as theft; but Sir G. Mackenzie says, that 'none 'were ever pursued capitally therefor.' The Annan and the Tweed were exempted from this Act; but the exemption was perpetually annulled by 1606 c. 5.

1705 c. 2, continued or re-enacted the prohibitions against killing salmon in forbidden time. The dates fixed by the Act of James I., 1424 c. 35, seem to have continued to regulate the commencement and termination of close time down to the year 1828, when a change in the law was effected by the Act 9 Geo. IV. c. 39, known as Home Drummond's Act. This Act fixed a uniform close time for the whole of Scotland (with the exception of the Tweed and the Solway), commencing on 14th September and lasting till 1st February; and the close time which was thus enacted continued in force till the bye-laws of the commissioners, under the Act of 1862, came into operation (*d*).

The system of a uniform close time for the whole of Scotland has now been abandoned, and the close time appropriate to each district has been fixed by the bye-laws of commissioners appointed by the Act of 1862 (*e*). These bye-laws, which have been ratified by the Secretary of State, and which have all the force of law, are printed in the Appendix. They are applicable to every mode of fishing for or taking salmon in any river (*f*), lake, or estuary, or in the sea, except by means of rod and line. Periods have also been fixed for the separate districts, subsequent to the commencement of the

(*d*) The Tay Fisheries Act of 1858 (21 & 22 Vict. c. 26), fixed a special close time for that river from 26th August till 1st February, and for rod fishing from 30th September till 15th February; but the close time has been fixed anew by a bye-law of the commissioners. *Vide* Appendix.

Prior to the Act of 1862, the close time for the Solway was fixed by 49 Geo. III. c. 45, from 23d September till 31st December. *Vide infra*, Chapter XVII.

The Tweed is now regulated by the Acts of 1857 and 1859, which fix the close time for nets from 14th September till 15th February, and for rod fishing from 30th November till 1st February. Prior to these Acts, the close time in the Tweed was regulated by a special Act, 1 Will. IV. c. 54, and extended from 15th October till 15th February, and for rod fishing from 1st November to 15th February. *Vide infra*, Chapter XVI.

(*e*) The commissioners, Mr Ffennell, Mr Eden, and Mr Leslie, were nominated in terms of the Act of 1862, by the Secretary of State; and their appointment was renewed, and their powers continued by the Acts 26 & 27 Vict. c. 50, 27 & 28 Vict. c. 118, and 28 & 29 Vict. c. 119.

(*f*) 'River' is defined by the Act of 1862 to include tributaries, and any lake from or through which any river flows.

annual close time for nets, during which it is lawful to fish for salmon by rod and line. The close time for rod fishing in all the rivers of Scotland is also detailed in the Appendix. The annual close time for every district must continue for one hundred and sixty-eight days; but within these limits, the date of commencement and termination is at the discretion of the commissioners. The period has in all cases been fixed, but it is probable that so long as the powers of the commissioners continue, an alteration might be effected by them on due cause shewn, and on the approval of the Home Secretary being obtained.

The rules regarding close time for oysters and lobsters will be found under their respective headings. There is no close time for any other kind of fish.

Weekly Close Time.—The weekly close time applicable to every method of fishing, except rod and line, is fixed by the Act of 1862 from six o'clock on Saturday night to six o'clock on Monday morning; but the commissioners have power, on application of the District Board, or of any two proprietors of fisheries in any district, to vary the period at which the weekly close time shall commence in any district, or any part of a district, in so far as they may think it reasonable or expedient. But the weekly close time is, in no case, to be less than thirty-six hours.

The weekly close applies to rod fishing, except as regards the six hours after six o'clock on Saturday evening, and the six hours before six o'clock on Monday morning. In other words, it is illegal to fish with the rod for salmon on Sunday (*g*).

The following bye-law regulating the weekly close time with regard to stake and bag nets, has been issued by the commissioners, and forms at present the law upon the sub-

(*g*) 25 & 26 Vict. c. 97, § 11. Rod fishing on Sunday is not illegal in England or Ireland; and on the Tweed there is no weekly close time for rod fishing.

ject. The different dates, at which the bye-law took effect on the respective rivers to which it is applicable, will be found printed in the Appendix:—

'1. That in each and every stake weir or stake net, a 'clear opening of at least four feet in width from 'top to bottom shall be made and kept free from ob- 'struction in each and every pouch, trap, or chamber 'of same (*h*).

'2. That the pouches, traps, or chambers of each and 'every shall be either raised and tied up to the upper 'ropes of same, or lowered and tied to the lower 'ropes, so as effectually to prevent the capture or 'obstruction of salmon.

'3. That the netting of the leader of each and every 'bag net shall be entirely removed and taken out of 'the water.'

The regulation for the observance of the weekly close time in cruives will be found under that heading (*i*).

Fishing during Close Time.—The offence of contravening the provisions of the Act with respect to close time, or the bye-laws of the commissioners on that subject, is specially dealt with by section 11; and the following penalties are made exigible for the various offences:—

Every person who fishes for or takes salmon, grilse, sea trout, bull trout, smolts, parr (*k*), or other migratory fish of the salmon kind, during the annual close time, as fixed under

(*h*) It is understood, that in consequence of the omission from this bye-law of express words to the effect that the opening in the net must be *from the top of the net to the bottom*, the spirit of the enactment has been evaded, and that cases occur in which the fishermen consider that the letter of the law has been fulfilled, if a gap, of a few inches in depth, but of the uniform width of four feet, is made at the top of the net.

(*i*) p. 176, *supra*.

(*k*) Whatever may be the merits of the 'parr controversy,' the Act assumes the question to be settled, and adopts the theory that the parr are truly of the salmon kind. As this fish is expressly included in the prohibitory enactment, it is of course no defence to offer to prove that the parr are truly a distinct species of fish.

the authority of the Act, by net, rod and line, or other means, shall, for every such offence, be liable to a penalty not exceeding £5, and to a farther penalty not exceeding £2 for every salmon, etc., taken or killed contrary to the provisions of the Act, or of any bye-law of the commissioners under the authority of the Act; and shall, in addition to such penalties, at the discretion of the magistrate, forfeit every boat, net, rod, line, or other article which has been or may be used in fishing for or taking salmon, etc., and which is found in the possession of such person at the time of the committing such offence.

A similar penalty is enacted for fishing during the weekly close time by net or other means, or on Sunday by rod and line, or for committing any act in breach of the commissioners' regulations in regard to the weekly close time.

The additional penalty of £2, which can be imposed for the possession of each salmon caught, applies also, according to the definition of the statute, to sea trout, parr, etc.; so that if the magistrate think proper to impose the full penalty for every fish, a very serious fine may be incurred. If more than one person be engaged in the capture of the fish, each will, undoubtedly, be liable to a penalty for every fish taken. The Act provides for no increase of penalties for repeated offences (*l*).

As regards the forfeiture of articles, a question may arise under the statute, to what articles the provision extends. 'Every boat, net, rod, line, or other article which has been or 'may be used in fishing for or taking salmon,' etc., is liable to forfeiture; but it is doubtful whether such articles as a fish

(*l*) This may perhaps be considered a defect in the law. Mr Russel, an excellent authority, in his evidence before the House of Lords Committee, says, 'by the plan 'adopted now, the low fines do something like it now, by proportioning the fine to 'the number of fish, but the poachers get over that, because they do not carry their 'fish with them, unless they are so strong that they can beat any probable number of 'water-bailiffs; they generally hide the fish in hedges and under bushes, and are 'only caught with one fish; and a man will be taken before the Sheriff of Selkirk, 'and be fined 5s., who is living by poaching.'

basket or wading boots is included in the meaning of the Act. The water-bailiffs and the magistrates would probably exercise the best discretion in confining themselves to the seizure and forfeiture of such articles merely as are themselves directly used in the capture of the fish, without interfering with such as are merely unessential accessories.

FOUL FISH (*m*).

By § 11 of the Act of 1862, 'every person who takes or has 'in his possession any foul or unseasonable salmon,' is, for every such offence, liable to a penalty not exceeding £5, and to a further penalty not exceeding £2, for every salmon taken or killed contrary to the provisions of the Act; and in addition to such penalties, at the discretion of the magistrate, to the forfeiture of every boat, net, rod, line, or other article, which has been used, or may be used, in fishing for or taking salmon, and which is found in the possession of such person at the time of committing such offence. There appears to be no authority for seizing the salmon caught by, or found in the possession of, the offenders. The offence is constituted by the taking or possessing foul salmon, or other fish of the salmon kind, in the open season as well as in close time.

The taking of the foul salmon, and the possession of them, are alternative offences, and a person cannot be convicted of both for one and the same act. If 'taking foul salmon' be the offence charged, the offender may be subjected to the principal penalty of £5, and also to the supplementary penalty of £2, for every fish taken. But if the 'possession of foul salmon' be the offence charged, it would seem that the supplementary penalty cannot be inflicted, unless there be evidence of the fish in the offender's possession having been 'taken or killed'

(*m*) One of the chief objects of the old salmon fishing statutes was the prohibition and punishment of the offence of taking red fish, or fish out of season. The Acts which were passed with this object were numerous, but it is sufficient here to refer to pp. 150 and 180, where they are noticed.

by him; which evidence would be sufficient to bring the offence up to that of taking the fish. Accordingly, where the only evidence produced against the accused is evidence of possession, it appears that he can only be subjected to the principal penalty of £5, and nothing more, even though a large number of fish be found in his possession. The evidence, however, which is necessary to establish the offence of 'taking' the salmon, may of course be something short of actually catching the offender in the act of fishing. If the accused be found at the water side with foul salmon in his possession, and equipped with implements for fishing, such or similar evidence will probably be sufficient to convict him of 'taking' the salmon; and if that offence be established against him, he may then be subjected to the supplementary penalty for every fish which he has in his possession, because the evidence which is sufficient to convict him of taking the foul salmon, is sufficient to establish that the salmon found in his possession had been 'taken or killed' by him.

As to the question, what circumstances will constitute possession of the foul salmon, no general rule can be laid down. The foul salmon may be discovered in the house of the offender, or they may be found in circumstances which lead to the inference that they have been secreted by him, or dropped upon the ground, in order to escape detection. It is sufficient to say, that the ordinary rules of evidence apply to such cases.

The definition of a 'foul or unseasonable salmon' is of course important, for the fish must answer that description, if the offence of taking them is to be constituted. A 'foul fish' means a *kelt* or salmon, which, having spawned, still remains in the fresh water before effecting its annual migration to the sea. There appears seldom to be much difficulty in distinguishing kelts from fresh fish, though, when some time has elapsed since the act of spawning, kelts may be so far 'mended' as to approach more nearly to the character of

fresh fish. A bagot or baggit salmon, *i.e.* a salmon which is on the eve of spawning, is included in the term 'unseasonable;' although in many cases it is not easily distinguishable from those which may lawfully be taken. In deciding whether a fish be foul or not, the evidence of fishermen, or other skilled persons, must of course be relied on; but in cases of doubt, or difference of opinion, an acquittal will be the safest course.

If foul or unseasonable salmon be accidentally taken, they should be returned to the water with as little injury as possible, and the statutory penalty will not be incurred.

If a foul or unseasonable salmon be captured or killed in ignorance of their character, such a plea, if satisfactorily established, will relieve the accused from liability; or, if it appear likely that the accused was not thoroughly aware of the character of the fish, such a doubt ought at least materially to mitigate the penalty inflicted. Where the ignorance pleaded is ignorance of natural history, it is perhaps hard to refuse the exemption which is justly withheld from an act committed *in ignorantiâ juris*. A man is bound to know the law, but he is not bound to know facts (*n*). The plea of ignorance, however, ought not to be readily received, for if it were easily admitted, it would continually be pleaded. Mere assertion of ignorance by an accused person, who is a professional fisherman, or known to be well skilled in the knowledge of fish, will not avail. In order to constitute the offence, the act must be wilful; but wilfulness is easily presumed. The same remarks apply to a plea of ignorance when pleaded in answer to a charge of taking salmon fry.

(*n*) *Hopton* v. *Thirwall*, 21 Nov. 1863, 9 Law Times (N. S.) 327. In this English case, which had reference to salmon fry, the defender pleaded that he was ignorant of the natural character of the fish which he had taken. The justices convicted in spite of the plea, but the conviction was quashed by the Court of Queen's Bench. In the Sheriff Court of Selkirkshire, an admission of the fact, with a plea of ignorance of the character of the fish, has been entered as a plea of guilty. *Robert Ganger*, May 1864.

CHAPTER IX.

SALMON FISHING—POACHING AND OTHER OFFENCES.

THE offence of salmon poaching, that is, the offence of taking salmon or other fish of the salmon kind, without having a legal right or permission from one who has a legal right, is punishable under the Acts, 9 Geo. IV. c. 39 and 7 & 8 Vict. c. 95. The former Act contains provisions for the preservation of salmon generally, but in this respect, it has been superseded by the Act of 1862. The Act of 1862 contains no provisions relative to poaching, and the matter is accordingly left to be dealt with by the two statutes referred to (*a*). The definition of the offence, which is contained in the earlier statute, is supplanted by that of the later one, doubts having been entertained whether the Act of Geo. IV. was applicable to the sea or seashore; and the only effect to which it is operative, is in fixing the regulations as to the recovery and application of penalties and the apprehension of offenders.

The offence is constituted, 'if any person not having a 'legal right or permission from the proprietor of the salmon 'fishery, shall wilfully take, fish for, or attempt to take, or 'aid or assist in taking, fishing for, or attempting to take, in 'or from any river, stream, lake, water, estuary, firth, sea 'loch, creek, bay, or shore, of the sea, or in or upon any part

(*a*) The Tweed Acts of 1857 and 1859, and the Solway Act of 1804, on the other hand, refer not only to the regulations for managing the fisheries of the river, but to poaching. The Acts, 9 Geo. IV. c. 39 and 7 & 8 Vict. c. 95, do not apply to the Tweed or the Solway or their tributaries (§ 14).

'of the sea, within one mile of low water mark in Scotland, 'any salmon, grilse, sea trout, whitling, or other fish of the 'salmon kind' (*b*).

The offence may be tried before the Sheriff or Justices, and the prosecution may be at the instance of any person. The penalty inflicted must be not less than ten shillings, nor more than five pounds for every offence, and when recovered, it goes to the informer (*c*). At the discretion of the Court, the fish caught may be forfeited, and also the boat, boat tackle, net, or other engine used by the offender; and they may be seized and detained until an order for their disposal is obtained from the Sheriff or Justices. The proceedings in a prosecution are summary, and are similar in all respects to the proceedings in a prosecution under the Act of 1862. It has been decided, in a prosecution under this statute, that the clause which declares it to be 'lawful' for the Court to proceed without any written pleadings or record of evidence, is imperative, and that the fact of the evidence having been recorded is sufficient ground for quashing the conviction (*d*).

A claim of right to fish, if it be *primâ facie* a reasonable one, will oust the jurisdiction of the Justices, but it will not do so if the plea be wholly unreasonable. And it is not sufficient that the claim of right be put forward in *bona fides*, for the doctrine of communism, though utterly untenable in law, may be advanced in perfect good faith.

The offence under the statute must be 'wilfully' committed. But to procure a conviction it is not necessary that

(*b*) 7 & 8 Vict. c. 95, § 1. At the time this Act was passed, the nature and extent of the crown's right, or of the right of the crown's grantee to salmon fishing in the sea was not properly understood. The case of *Gammell* v. *Commissioners of Woods*, 1859, 3 Macq. 455, placed the law on a firm and definite footing.

(*c*) 9 Geo. IV. c. 39, § 9.

(*d*) *Macintosh*, 6 July 1829, 1 Deas & Anderson, 183. Lord Gillies said, 'The 'Justices were not entitled to take down the evidence. The statute only gives 'them power to judge by a summary form of process. But they convert themselves 'into a court of record. The statute prescribed summary proceedings to save ex- 'pense; if the evidence were recorded, the accused might be ruined by the expense.'

there be a consciousness of wrong on the part of the accused. A claim of right, however sincere and however plausible, so long as it be manifestly untenable, will not protect him. If the act is *primâ facie* unlawful, the justices may convict. The statute does not require malice or unlawful intent in order to constitute the offence; the word 'wilfully' meaning merely, designedly, and not accidentally (*e*).

If permission from the proprietor or other authorised person be pleaded, it must be clearly proved (*f*), and in England it has been held in reference to a similar statute in the game laws, that the leave must be expressly obtained before the alleged trespass, and that no *ex post facto* leave will avail (*g*). The statute, according to its strict wording, requires that the permission should be from the 'proprietor' of the fishery, but permission from a lessee would constitute also a 'legal right.' Prosecutions of this nature are subjected to a limitation of six months from the time the offence is committed, and a conviction under the statute is a bar to all other proceedings for the same offence (*h*), whether under the Act of 1862 or otherwise. It has been decided in England, that a person can only be convicted of one offence on one day, however numerous the acts of poaching on that day (*i*).

It has been held, that an offender imprisoned under this statute, was entitled to be alimented by the incarcerator under the Act of Grace (*k*); but the decision is of doubtful authority, and would probably not now be sustained. In a similar question under the Salmon Act of 1862, in the Sheriff-court of Perthshire (*l*), it has been decided that the prison authorities are liable for the aliment of the offender. The

(*e*) *Hudson* v. *M'Rae*, Queen's Bench, Nov. 1863.

(*f*) *Easton* v. *List*, 29 Jan. 1844, 2 Broun 95.

(*g*) 1 & 2 Will. IV. c. 32, § 30. *Morden* v. *Porter*, 1860, 7 C. B. (N. S.) 641; Paterson's Game Laws, p. 56.

(*h*) 9 Geo. IV. c. 39, § 13.

(*i*) *R.* v. *Lovet*, 1797, 7 Term Reports, 152.

(*k*) *Robertson*, 16 Feb. 1837, 9 Jurist, 289.

(*l*) *Malloch*, May 1865; Glasgow Scottish Law Magazine, vol. iv. p. 90.

principle is in accordance with modern decisions, which recognise proceedings under these statutes as being of a criminal nature.

In a prosecution for salmon poaching, under 9 Geo. IV. c. 39, a Justice may act even though he is personally interested in the fishery in question, provided that he himself is not a party to the prosecution (*m*).

Convictions under the Act may be appealed to the next Circuit Court of Justiciary in the same manner and under the same regulations as under the Act of 1862 (*n*).

Penalties inflicted under this Act are not of the nature of a civil debt, and the person convicted may be imprisoned for non-payment (*o*).

Night Poaching.—Though the offence of fishing for or taking salmon contrary to law is not, properly speaking, a crime, but rather a trespass or invasion of the rights of property, it may, under certain circumstances, by statutory provision, be elevated into a criminal offence. The Salmon Fisheries Act of 1862 (*p*) contains a provision, that where *three or more persons, acting in concert, illegally fish for salmon by night*, they shall be considered as guilty of a criminal offence. This enactment, which, for the first time, recognises the possibility of a criminal offence being committed in relation to salmon fishing, resembles a similar enactment regarding game poaching by night, and proceeds upon the principle, not of protecting the fish or the value of the property in them, but on account of the great danger which occurs to the lieges from the practice of night poaching, and for preventing the more serious crimes to which such inroads upon property frequently lead (*q*).

(*m*) 9 Geo. IV. c. 39, § 12.
(*n*) *Vide infra*, *voce* Prosecution of Offenders, 25 & 26 Vict. c. 97, § 28.
(*o*) *Lawson* v. *Jopp*, 16 Feb. 1853, 15 D. 392.
(*p*) 25 & 26 Vict. c. 97, § 27.
(*q*) *Reid*, etc., 25 April 1836, 1 Swinton, 202.

The offence, in order to fulfil the statutory requisites, must be committed between the expiration of the first hour after sunset, on any day, and the beginning of the last hour before sunrise on the following day. And the offence is constituted if the parties accused 'enter, or are found upon, any ground 'adjacent or near to any river, or estuary, or the sea, or in or 'upon any river, or estuary, or the sea, with intent illegally 'to take or kill salmon; or having in his or their possession 'any net, rod, spear, light, or other instrument used for 'taking salmon, with such intent as aforesaid; or shall ille-'gally take or kill, or attempt to take or kill, or aid or assist 'in killing or taking salmon' (*s*).

The provision of the Act extends not only to poachers fishing on the property of another, but also to proprietors or lessees on their own fisheries, provided that the act which they commit, at night and in company, is illegal. Thus, if three or more persons at night, in a river or fishery where they have a right of fishing, pursue the sport in circumstances prohibited by this or any other statute—if, for instance, they fish during the annual or weekly close time, or fish with a net of too small a mesh, or contravene any bye-law of the commissioners, or any section of the Act, in company, and at night—they are guilty of a criminal offence. Such cases are not likely to arise; but it will be observed, that they fulfil the requisites of the statutory crime, no less than when the offence is committed by poachers.

The offence, like all others under the Act, may be prosecuted at the instance of the clerk of the District Board where the offence is committed, or by any other person whatever. Probably the best custom to adopt is, that this offence, differing, as it does, in its nature from the other offences prohibited by the Act, should be taken up by the procurator-fiscal, and prosecuted by him.

(*s*) The use of the leister during the day time is not prohibited by the general Scotch Act, as it is upon the Tweed.

The enactment extends to the Tweed (*t*) and its tributaries. The offence, if committed on a part of the Tweed or its tributaries which is within Scotland, may be prosecuted as in other parts of Scotland. If committed on a part of the Tweed or its tributaries which is within England, the offence is considered and treated as a misdemeanour.

The offence is punishable by a fine not exceeding £5, or by imprisonment for any period not exceeding three months, as the sheriff or justices may determine. If a fine be imposed, imprisonment for not more than three months may be adjudged in default of payment. As regards this offence, the Act imposes no supplementary penalty for the fish that have been taken; nor are the articles used in the fishing liable to forfeiture or seizure. The latter penalty appears to be confined to offences under the 11th section of the Act.

MISCELLANEOUS OFFENCES.

Fishing by means of a Light.—By 24 & 25 Vict. c. 97, § 11, it is enacted that every person who uses, or has in his possession, any light for the purpose and with the intention of taking salmon, shall, for every such offence, be liable to a penalty not exceeding £5, and to a farther penalty not exceeding £2 for every salmon taken or killed contrary to the provisions of the Act, or the bye-laws of the commissioners; and in addition to such penalties, shall, at the discretion of the magistrate, forfeit every boat, net, rod, line, or other article which has been or may be used in fishing for or taking salmon, and which is found in the possession of such person at the time of the committing such offence (*u*).

Unless the person accused of this offence, commonly called burning the water, be found in the act of fishing by means

(*t*) 25 & 26 Vict. c. 97, § 34.

(*u*) There is no prohibition, as in the Tweed Act, of using a leister in the day time.

of the light, or with the light in his possession under circumstances which make his purpose of fishing evident, it will perhaps be difficult to prove that the light is possessed by the accused 'for the purpose and with the intention of taking 'salmon.' If the light be discovered in the house of the accused, it will perhaps be difficult to establish that an article of such a vague description is for the purpose of fishing salmon, and still more so, that there is any intention of using it for that purpose.

Catching Salmon leaping at a Fall.—By 24 & 25 Vict. c. 97, § 11, it is enacted that every person who sets a net or any other engine for the capture of salmon when the fish show themselves when leaping at or trying to ascend any fall or other impediment, shall be liable in a similar penalty.

With regard to this prohibition, it seems only necessary to remark, that it extends only to machinery of a fixed nature, and imports no prohibition of dragging pools lying at the foot of falls.

Taking or destroying the young of Salmon, or obstructing their passage, or disturbing spawning beds.—By 24 & 25 Vict. c. 97, § 11, every person who wilfully takes or destroys, or injures, or obstructs the passage of the young of salmon, or disturbs any spawning bed, or any bank or shallow on which the spawn of salmon may be deposited, is made liable, for every such offence, to a similar penalty. The clause goes on to declare, that this provision shall not apply to acts done for the purpose of the artificial propagation of salmon or for other scientific purposes, or in the course of the exercise of rights of property in the bed of any stream (*x*). It provides

(*x*) The exercise of rights of property in the bed of a stream, though not subjecting the proprietor to the provisions of this Act, may of course, in some circumstances, render him liable to action at the instance of upper or lower heritors on the stream.

also that the district board may, with the consent of all the proprietors of salmon fisheries in any river or estuary, adopt such means as they think fit for preventing the ingress of salmon into narrow streams or tributaries, in which the fish or the spawning beds are, from the nature of the channel, liable to be destroyed, but also so that no water rights used or enjoyed for the purposes of manufactures, of agriculture, or of drainage, shall be interfered with thereby.

Meshes of Salmon Nets.—This subject is specially regulated by the Act of 1862. The commissioners were empowered, by section 6 (6) of the Act, to make general regulations with respect to the meshes of nets to be used for the capture of salmon; and the following bye-law on the subject was accordingly enacted. The different dates at which the bye-law took effect on the respective rivers to which it is applicable, will be found printed in the Appendix:—

> 'That no net shall be used for the capture of salmon, 'the meshes whereof shall be under one inch and 'three quarters in extension from knot to knot, mea- 'sured on each side of the square, or seven inches 'measured round each mesh when wet; and the 'placing two or more nets behind or near to each 'other, in such manner as to practically diminish 'the mesh of the nets used, or the covering the nets 'used with canvas, or the using any other artifice so 'as to evade the provisions of the regulations with 'respect to the meshes of nets, shall be deemed to 'be an act in contravention of this bye-law.'

The offence of contravening this bye-law is dealt with by the 11th section of the Act. Every person, for every such offence, is liable to a penalty not exceeding £5, and to a further penalty not exceeding £2, for every salmon, etc., taken or killed contrary to the provisions of the Act, or of any bye-law made by the commissioners under the authority of this

Act; and shall, in addition to such penalties, at the discretion of the magistrate, forfeit every boat, net, rod, line, or other article, which has been, or may be, used in fishing for or taking salmon, and which is found in the possession of such person at the time of committing such offence (*y*).

Obstructions generally.—The commissioners were also empowered, by section 6 (6) of the Act, to make general regulations with respect to 'obstructions in rivers or estuaries to 'the passage of salmon;' but though this power remains in them during the subsistence of their office, they have as yet issued no bye-laws other than those already adverted to. The contravention of any bye-laws which may be issued under this head, is, by the 11th section, expressly made punishable by the same penalties as are attached to the other offences.

Special provision is made by the 10th section of the Act, that it shall not be lawful to fish for or take salmon, at any place, or by any mode, prohibited by the statute relating to salmon or salmon fisheries in Scotland, subsisting and in force at the date of the passing of the Act of 1862; and nothing contained in the Act, or in any bye-law made by the commissioners, is to render legal any mode of fishing which was, or would have been, illegal at the passing of the date of the Act.

SEIZURE OF ARTICLES.

By the 26th section of the Act, any constable, water bailiff, watcher, or other officer appointed by the district board, is empowered to seize any article which the previous section 11 declares to be liable to forfeiture. This includes 'every boat, net, rod, line, or other article which has been,

(*y*) Meshes, which were originally of the proper legal dimensions, are apt to become smaller by the process of repairing the net, or by tarring it; but it is the business of any person using a net to take care that the meshes are at no time below the legal size.

'or may be used in fishing for or taking salmon, and which is 'found in the possession of any person at the time of the 'committing' any of the offences enumerated in the 11th section. After seizure, the sheriff or justice before whom the offender is brought, may either order the same to be destroyed or to be sold, and the proceeds of such sale to be paid to the clerk on behalf of the district board. As the offences under the 11th section of the Act may be committed by an owner or lessee on his own fishery, so the articles used by him in committing such offence are liable to seizure by the constable or water bailiff.

Questions may arise as to what articles the power of seizure extends; and it is doubtful whether such articles as a fishing basket, a fly-book, or wading boots, are included in the meaning of the Act. The water bailiffs and the magistrates would probably exercise the best discretion in confining themselves to the seizure and forfeiture of such articles merely as are *ejusdem generis* with those enumerated by the Act,—articles which are themselves directly used in the capture of the fish,—without interfering with such as are merely unessential accessories.

The articles, in order to be liable to forfeiture and seizure, must be 'found in the possession of the offender at the time 'of committing the offence.' As to the question, what circumstances will be held to constitute possession at the time no general rule can be laid down. The Act probably contemplates the case of the articles being found upon the person of the offender; but in ordinary offences, proof of possession may be constituted otherwise. The articles may be discovered in the house of the offender, or they may be found in such circumstances as to infer that they have been secreted by him, or dropped upon the ground in order to escape detection. It is sufficient to say that the ordinary rules of evidence apply to such cases.

No person, except a constable, water bailiff, watcher, or

other officer appointed by the district board, is entitled to make the seizure; and they may do so, though the offences under the 11th section be committed by an owner or lessee on their own fishery. But, in the case of a poacher, any person may, without warrant, seize and detain him (*z*). Salmon caught in contravention of the Act of 1862 are not liable to seizure; but the capture of salmon during close time, whether by an owner of a fishery or otherwise, is punishable under 9 Geo. IV. c. 39, § 11, *inter alia*, by the forfeiture of the fish.

Theft of Fish.—By the common law, following the rules of the civil law, all fish, with the exception of royal fish (*a*), become the property of the captor, even though he be one who has no right to the fishing (*b*). There may be statutory regulations empowering the officers of the law to make seizure of the fish in certain cases, but this in no way annuls the rule of common law (*c*). In the ordinary case it is not a larceny or a felony, but merely a trespass on the right of property, to take fish from the water, where the right of fishing belongs to another; but where the fish have been deprived of their natural liberty and practically reduced into possession, they become the property of him who has brought them under his power. Thus to take fish from a pond where they have been placed, or in which they naturally live, is theft (*d*); but in order to raise the offence to theft, it is evidently necessary that the pond or lake in which the fish are enclosed should be of such limited extent that the fish are actually deprived of their character *ferœ naturæ*. This question is wholly one of degree, and it is evident that no definite rule can be laid

(*z*) 9 Geo. IV. c. 39, § 11.
(*a*) *Supra*, p. 46.
(*b*) Craig, 1. 15. 17.
(*c*) *Scott* v. *Everitt*, 18 Jan. 1853; 15 D. 288. *Gregory*, 1752, M. 4989.
(*d*) 1474 c. 60; Stair, 2. 3. 76; Ersk. 2, 1. 10. In England and Ireland it is larceny to take fish from a pond near a dwelling house by 24 & 25 Vict. c. 96, § 24; but the Act does not extend to Scotland.

down regarding it. Carp or gold fish in a garden pond may obviously be the subject of theft, while fish in a lake of considerable size, though it is wholly within the lands of a proprietor, are clearly as much in possession of their natural liberty as if they were in a river or in the sea. In the same way, trout which are preserved in a stream and fed, and which are confined to the proprietor's grounds by gratings placed in the channel, seem to be already so far reduced into possession that to take them would be theft.

CHAPTER X.

APPREHENSION AND PROSECUTION OF OFFENDERS.

THE Act of 1862 confers no power on the constables or bailiffs of arresting an offender *brevi manu;* but directs that a warrant for apprehension may be issued by the sheriff or justices on a petition or complaint being presented to him or them. But it has been held, that the powers of constables to apprehend persons detected in the commission of an offence, are not abrogated by special statutory rules, empowering justices to grant warrant to summon offenders on information on oath of a breach of the statute (*a*). In the case referred to, the accused were apprehended for contravention of the statute 6 Geo. IV. c. 129, for threatening or obstructing workmen in their trade or business; several hours after they had been taken into custody, a complaint was presented, and a warrant granted for their apprehension in terms of the statute. Their apprehension was objected to as illegal, but the Court repelled the objection, inasmuch as the parties were taken up committing the outrage, there being no time to swear informations. There existed here a necessity for immediate action, which could perhaps not be pleaded in the case of an offence against the fishery Acts. In the case of three or more fishing illegally by night, the principle here sustained would also

(*a*) *M'Vie and Linch* v. *Dykes;* H. C. 1855, 2 Irv. 429. M'Donald's *Criminal Law*, p. 284.

apply, for that offence is declared to be a crime, and immediate arrest in order to avert a breach of the peace might be necessary, as much as in the case of *M'Vie*. The power of immediate arrest, can however be scarcely considered to have been extended by this decision, to all offences under the Fishery Acts, and the proper course, in cases where no violence is used, is to obtain a warrant from the sheriff or justices before proceeding to the seizure of the offender's person. The constable may, however, properly detain the offender until he can get him identified. It is true, that in the case of *M'Vie*, the Act upon which the offenders were prosecuted, directs a procedure with regard to apprehension, similar to that laid down by the Act of 1862; but, although in that case, immediate apprehension was considered legal without the formality of a previous warrant, it would be unsafe to act upon the principle in all cases. The absence of a warrant may be fatal to all subsequent proceedings; and this is peculiarly the case when the arrest takes place some time after the alleged offence, and where the accused has made no attempt to escape the law.

A mere watcher, or water bailiff, in the private service of a proprietor or of a fishery board, has, in no circumstances, the power immediately to arrest a person whom he discovers committing an offence against the Act of 1862 (*b*); but as regards poachers, the law is different, and will be explained hereafter.

Any magistrate who himself witnesses the commission of a criminal offence, may at once arrest the offender or order his arrest; and a constable or other officer of law, who himself sees a person in the act of committing a felony or breach of peace, or threatening violence, may at once arrest him. He may also do so on direct information of others, and he may command the assistance of the bystanders in making the

(*b*) The law is different as regards the Tweed, *vide infra*, Chapter XVI.

arrest (*c*). Such serious occasions are not likely to arise in connection with fishery offences.

As regards the apprehension of salmon poachers, the law is laid down by 9 Geo. IV. c. 39, § 11, for though the subsequent Act, 7 & 8 Vict. c. 95, relates to the same offence, and in fact supersedes the previous statute, it contains no provision with regard to apprehension, and this matter remains therefore as regulated by the Act of Geo. IV. The section in question enacts, that 'it shall be lawful for any person, 'without any warrant or other authority than this Act, *brevi* 'manu, to seize and detain any person who shall be found 'committing any offence against this Act, and to carry such 'person before any justice of the peace or other magistrate, or 'to deliver such person to a constable, who is hereby required 'to carry such person before a justice of the peace or magis-'trate, who shall forthwith examine and discharge, or commit 'such person until caution *de judicio sisti* be found, as the 'case may require.'

This power of immediate apprehension was applied by the Act referred to, to all offenders against the Act, whether poachers or not. The regulations in that Act, however, for the preservation of salmon, other than those concerning poaching, have been superseded by the Act of 1862, which contains no authority for immediate apprehension. The power of immediate apprehension conferred by 9 Geo. IV. c. 39, § 11, remains in force therefore only in regard to poachers. It can be exercised only when the poacher is caught *flagrante delicto*, and the offender must at once be handed over to the officers of the law. Where special statutes confer a power of immediate arrest, the circumstance will be referred to under the appropriate heading.

(*c*) M'Donald's *Criminal Law*, p. 284. *Stevenson* v. *Watson*, H. C. 1857; 2 Irvine, 592. *Bain* v. *O'Neil*, H. C. 1854; 1 Irvine 583.

PROSECUTION OF OFFENDERS.

All offences under the Act of 1862 may be prosecuted either before the sheriff or before two justices having jurisdiction, at the place where the offence was committed (*d*). The *locus delicti*, and not the residence of the offender, will decide the forum. The prosecution may be conducted according to the forms prescribed by the statute, or under the Summary Procedure Act. There must be two justices present at every diet at which the case is called; but the hearing of a case, before the proof has commenced, may be validly prorogued by one Justice acting alone (*e*). The interlocutors and judgments of the Court must be signed by both, or by all present at the hearing who concur; but in matters of general procedure, where there are several justices present, one may sign as preses, adding the letter P. after his name (*f*).

Offences may be prosecuted by any person. The clerk of the district board usually undertakes the duty, and is competent to do so even in the case of three or more persons fishing illegally at night, which § 27 declares to be a criminal offence; but as regards this latter offence, it is perhaps preferable that the prosecution should be undertaken by the procurator fiscal of the county. In some counties, all prosecutions are conducted before the sheriff, and at the instance of the procurator fiscal (*g*); but in others the cases are com-

(*d*) The English Salmon Fishery Act of 1861, 24 & 25 Vict. c. 109, § 36 and 37, provides, that where an offence is committed in waters forming a boundary between two counties or districts, the prosecution may be in either county or district, and that an offence committed on the sea coast or at sea beyond the ordinary jurisdiction of a justice of the peace, may be tried as if committed within the adjoining jurisdiction. The Scotch Act does not contain this provision.

(*e*) *Carruthers* v. *Jones*, 1 June 1867; H. C. 5 Irvine, 398.

(*f*) *Ranken* v. *Alexander*, 1836, 1 Swinton, 44; *Birrell* v. *Jones*, H. C. 1860; 3 Irvine, 556.

(*g*) This custom prevails in the counties bordering on the Tweed, *i.e.* Berwick, Roxburgh, Selkirk, and Peebles.

If the procurator fiscal or other public official prosecutes, and the complaint is dismissed, expenses may be given against him in the same way as against a private individual. *Walker* v. *Jones*, 27 Sep. 1862, 4 Irvine, 234.

monly disposed of before the justices, and the prosecution is undertaken by the procurator fiscal in that court, or by the chief constable of the county, who sometimes holds the appointment of superintendent of water bailiffs. In some counties, the chief constable holds also the appointment of procurator fiscal in the Justice of Peace Court. Where no district board has been formed, prosecutions, as elsewhere, may proceed at the instance of any person. The superintendent of fisheries, where such an officer has been appointed, sometimes acts as prosecutor. The expense of prosecutions under the Act, whether they are conducted by the public prosecutor of the district or by an officer of the fishery board, is borne by the board.

Prosecutions are conducted in a summary manner. A petition or complaint (*h*) is presented to the sheriff or justices on which the warrant proceeds. The petition or complaint, need not be in writing, nor is it necessary that it should be given on the oath or declaration of the applicant (*i*), though the magistrate may require it if he think fit. It is necessary, however, that a complaint should be regularly made, or

(*h*) The following form of complaint, prescribed by the Summary Procedure Act, 1864 (27 & 28 Vict. c. 53, § 4), is applicable to fishing offences.

'Under the Summary Procedure Act, 1864.

'Unto the Honourable Her Majesty's Justices of the Peace for the County of (*or* Sheriff of the County of)

'The complaint of *A. B.*, Procurator Fiscal of Court (*or other party entitled to* '*prosecute*):

'Humbly sheweth—

'That *J. K.* (*designation*) has contravened the Act (*or* has been guilty of an offence 'within the meaning of the Act (*specify the Act or Acts*), in so far as (*state par-* 'ticulars of contravention or offence) whereby the said *J. K.* is liable (*state shortly* 'the nature of the forfeiture or penalty and the alternative).

'May it therefore please your Honours (*or* Lordship) to grant warrant to ap-
'prehend the said *J. K.* and bring him before you (*or* to cite the said *J.*
'*K.* to appear before you) to answer to this complaint, and thereafter to
'convict him of the aforesaid contravention, and to adjudge him to suffer
'the penalties provided by the said Act (*or* Acts, or any of them).

(*Where a warrant* ad factum præstandum *is required it must be specially prayed for*).

'According to Justice.

'*A. B.* (*signature of complainer*).'

(*i*) Macdonald's *Criminal Law*, p. 285; Alison, ii. 121.

a conviction proceeding in its absence, will be illegal (*k*). The complaint, if in writing, should contain an allegation of an offence which is recognised by law; the time and place (*l*) of the alleged act should be set forth; and if the offence be statutory, the section of the statute relied on must be correctly referred to. If there is any error of this kind in the complaint, any conviction following upon it will be set aside (*m*). But on the other hand, very great accuracy of detail is not exacted (*n*). No objection to the complaint for defect in form or substance is allowed, or for any variance between the complaint and the evidence adduced, which does not change the character of the offence charged; 'but if any 'such objection or variance shall appear to the Court to be 'such that the respondent has been thereby deceived or mis-'led, it shall be lawful for the Court to adjourn the hearing 'to some future day, and at the same time, or at any stage 'of the proceedings, to direct such amendment to be made 'upon the complaint as may appear to be requisite, not 'changing the character of the offence, and such amendment 'shall be authenticated by the signature or initials of the 'judge or clerk of Court (*o*). The complaint must be instituted within six months from the time when the offence is committed (*p*).

The warrant must be in writing; it should be dated, and if by a justice or justices of the peace, it should bear their style or quality, and the county for which, and place where, it is given. It should describe as clearly as possible the person

(*k*) *Law* v. *Steel*, H. C. 1846, Arkley 109; *Welsh* v. *Macpherson*, 1850, Shaw, 345.

(*l*) An objection that the *locus* was too vaguely set forth, inasmuch as the offence was said to have been committed in the river Southesk, in a certain parish, said river running three miles through the parish, was repelled. *Bennet* v. *Hinchy*, 6 Feb. 1860; 32 Jurist, 476. An objection of this kind should be stated at the trial, and cannot be entertained on appeal. *Ibid.*

(*m*) *Hopton* v. *Wicks*, 1858, 3 Irvine, 51; *Buist* v. *Linton*, 1865; 38 Jurist, 47.

(*n*) Macdonald's *Criminal Law*, 579.

(*o*) 27 & 28 Vict. c. 53, § 5. (*p*) 27 & 28 Vict. c. 53, § 24.

against whom it is issued, and it is proper that the crime charged should be stated therein. It is sufficient that the warrant be signed by one justice, though two justices are necessary to try the case (*q*). And it is not necessary that the same magistrate who signs the warrant should try the case. Warrants of citation may be signed by the clerk of Court. The warrant may be for the apprehension of the accused, or merely to cite him to appear, as the circumstances of the case may require; but the latter is the ordinary course in regard to fishery offences. It is not competent to apprehend, if the warrant be merely to cite the accused. Warrants of either nature are granted at the discretion of the Court, and where the complaint prays for a warrant of apprehension, it is competent for the Court to grant merely a warrant for citation. The warrant of citation or apprehension may have annexed to it a warrant to cite witnesses and havers for both parties, or to apprehend them in cases where that is necessary. It is not necessary to serve the accused with the complaint upon which the warrant proceeds, or with a list of the witnesses to appear against him (*r*).

At the trial, evidence of the offence is taken, either by the oath of one or more credible witnesses, or by the confession of the accused, and acquittal or conviction is pronounced in accordance therewith. No written pleadings are necessary, and the evidence is not recorded. The charge, and the conviction or acquittal, must be recorded; as well as all objections to competency and relevancy, and all requests for delay and the deliverances thereon by the magistrates (*s*).

If the prisoner offers to prove an *alibi*, and requests delay for the purpose of adducing evidence, delay must be granted,

(*q*) *M'Leod* v. *Buchanan*, 24 Jan. 1835, 13 Shaw, 1153; *see* also 27 & 28 Vict. c. 53, § 21.

(*r*) *Ayton* v. *Haig*, H. C. 1836, 1 Swinton 78; *M'Kean* v. *Wilson*, 1848, Shaw 132; *Scott* v. *Colville*, 1850, Shaw 466.

(*s*) *Giles* v. *Baxter*, H. C. 1849, Shaw 203; *Christie* v. *Adamson*, 1853, 1 Irvine 293; *M'Vie and Linch* v. *Dykes*, H. C. 1855, 2 Irvine 429.

and refusal will be a ground for quashing the conviction. But the demand for delay must be made in Court, and not merely to the officer apprehending.

Where the complaint concludes for a pecuniary penalty only in the first instance, the Court may, without adjourning, proceed to hear and dispose of the complaint in the absence of the respondent; but a conviction in absence must proceed upon competent evidence, and the commission of the offence must be established to the satisfaction of the Court. Conviction does not pass in default of appearance, unless specially authorized by statute (*t*).

An erasure in an important part of a conviction is a sufficient ground for setting it aside (*u*); but mere interlineations or the like will not have this effect, if the conviction and sentence be distinct (*x*). The conviction and sentence should be written out and signed in the presence of the accused (*y*); and it must appear upon the face of it whether it proceeds upon a plea of guilty, or upon proof led (*z*). It is not necessary that a conviction should bear to proceed upon the oath of a competent witness (*a*). A conviction is invalidly signed by a magistrate who was not present when the proof was taken (*b*). Convictions under the Summary Procedure Act cannot be quashed on a mere point of form. A sentence of imprisonment must not exceed the term appropriated by law to the offence; and where imprisonment is provided in case of failure to pay a fine, it cannot be inflicted for the non-payment of the prosecutor's expenses (*c*), unless this is specially

(*t*) 27 & 28 Vict. c. 53, §§ 7, 15.

(*u*) *Rodger* v. *Magistrates of Pittenweem*, H. C. 1847, Arkley 393.

(*x*) *Lochrie* v. *Molison*, H. C. 1854, 1 Irvine 506; Macdonald's *Criminal Law*, 584.

(*y*) *Hume* v. *Meek*, H. C. 1846, Arkley 88.

(*z*) *Scott* v. *Sinclair*, H. C. 1857, 2 Irvine 745; *Gray* v. *Macgill*, 1858, 3 Irvine, 29.

(*a*) *Bennet* v. *Hinchy*, 6 Feb. 1860, 32 Jurist 476.

(*b*) *Wilson* v. *Morrison*, H. C. 1844, 2 Broun 231.

(*c*) *Gilchrist*, H. C. 1843, 1 Broun 570.

warranted by the Act under which the prosecution is brought. The Salmon Act of 1862 appears to warrant a sentence of imprisonment for failure to pay costs, as well as failure to pay the penalty.

In proceeding against offenders, the forms specially prescribed by the Act may be adopted, or the forms established by the Summary Procedure Act of 1864; or, where the case is conducted in the Sheriff Court, the sheriff, at his discretion, may adhere to the forms generally in use in the Sheriff Court (*d*).

The sheriff, or justices, on proof of the offence, and on conviction and sentence having passed, may find the person complained against liable in expenses, and may decern for payment of the same, and may grant warrant for the recovery of all penalties and expenses decerned for, by poinding and imprisonment for any period not exceeding six months.

All penalties and expenses incurred under the Act, or under any bye-law or regulation of the commissioners, may be recovered either by the form of criminal proceeding above narrated, or by ordinary action, or in the Small Debt Court of the Sheriff. If proceedings are taken by means of civil action, the evidence of the defender is competent in the cause, which would be otherwise in the case of a criminal prosecution.

If the prosecution is conducted at the instance of the clerk to the district board, the penalties recovered are to be paid to him; and, along with the proceeds of any articles that have been seized and sold under the authority of the Act, applied by the board towards defraying the expenses incurred by them in carrying out the provisions of the Act.

A conviction by the sheriff or justices may be appealed to the next Circuit Court of Justiciary (*e*), or where there is

(*d*) *Knox* v. *Ramsay*, 1837, H. C. 1 Swinton 517; *Clapperton* v. *Rodger*, H. C. 1855, 2 Irvine 292; *Shields* v. *Dykes*, H. C. 1854, 1 Irvine 359.

(*e*) Appeals cannot competently be brought before the Winter Circuit Court at Glasgow. *Davidson* v. *Gray*, 1844, 2 Broun 9.

no Circuit Court, to the High Court of Justiciary at Edinburgh. Appeals of this description are regulated by the Act 20 Geo. II. c. 43, § 34, and the limitations, conditions, and restrictions therein imposed, are adopted with certain variations. All judgments of the inferior courts, in matters criminal, which includes prosecutions for fishery offences, may be appealed. The appeal may be taken and entered in open Court at the time the decree appealed against is pronounced, or at any time thereafter within ten days. The appeal must be lodged with the Clerk of the Court whose decision is appealed against, and a duplicate must be served upon the adverse party personally, or at his residence, or upon his agent in the case (*f*). If the appeal contains any conclusion against the inferior judge, whose decision is appealed against, by way of censure or damages for alleged wilful injustice, oppression, or malversation, a copy of the appeal must be served upon him. Service must be made at least fifteen days before the sittings of the Circuit Court (*g*); and it constitutes a sufficient summons to the respondent to attend. The appeal is disposed of by the Judge or Judges of the Circuit in a summary manner; and if the reasons of appeal be not sustained, the appellant may be condemned in costs, not exceeding the amount actually expended by the respondent. The judgment of the Circuit Court is final.

At the time the appeal is entered, a bond of caution must be lodged in the hands of the Clerk of the Court from which the appeal is taken (*h*), binding the appellant to pay the penalty and expenses awarded against him by the judgment appealed from, in the event of the appeal being dismissed, together with any additional expenses that shall be awarded by the Circuit Court or Court of Justiciary on dismissing the

(*f*) *Smith* v. *Pro.-Fisc. of Paisley*, 24 March 1830, 2 Jurist 400.
(*g*) *M'Ritchie* v. *Thompson*, 1847, Arkley 270.
(*h*) *Skinner* v. *Robertson*, 1844, 2 Broun 185.

appeal. The Clerk of Court is answerable for the sufficiency of the caution (*i*).

In cases of difficulty, the Circuit Court may certify appeals to the High Court of Justiciary; or, where the prosecution is for penalties merely of a *quasi* criminal nature, the case may be certified to the Court of Session (*k*). Where an appeal has been certified to the High Court, the same case must be presented as in the Circuit Court, and no new objection to competency can be stated (*l*).

The review of decisions under the Act, by process of advocation or suspension, or in any other manner than by appeal, is excluded. This enactment, however, has not the effect of preventing a person who has been oppressively or illegally convicted from applying to the High Court for redress by the ordinary process of suspension (*m*). When there is a radical defect in the judgment, a clear excess of jurisdiction, or objections that go fundamentally to the validity of the sentence, there is room for a suspension. If the person convicted has given notice of appeal, or even lodged his bond of caution, he is nevertheless not precluded thereby from proceeding with the suspension (*n*). But if he has allowed the ensuing circuit to pass by without lodging an appeal, and has no satisfactory reason for the delay in availing himself of the peculiar statutory remedy, the suspension will be refused (*o*).

(*i*) Act 20 Geo. II. c. 43, § 36. See also 25 & 26 Vict. c. 97, § 28. *Christie* v. *Johnson*, 1854, 1 Irvine 560; *Marshall* v. *Turner*, 1849, Shaw 222.

(*k*) Act 20 Geo. II. c. 43, § 37. In the case of *Henderson* v. *Johnstone*, 11 Dec. 1862, 1 Macph. 128, a complaint under the Solway Act was certified to the Second Division of the Court of Session.

(*l*) *Whatman* v. *Ogilvie*, H. C. 1854, 1 Irvine, 483.

(*m*) *Coyle* v. *M'Kenna*, H. C. 1859, 3 Irvine, 452; *Gray* v. *M'Gill*, 1858, 3 Irvine, 29; *Malonie* v. *Jeffrey*, H. C. 1840, 2 Swinton, 485; *M'Phail* v. *Campbell*, H. C. 1861, 4 Irvine, 18.

(*n*) *Kennedy* v. *Young*, 1837, 1 Swinton 474; *Gray* v. *Mackenzie*, 1862, 4 Irvine 166; M'Donald's *Criminal Law*, p. 590.

(*o*) *Knight, etc.* v. *Burnett*, H. C. 1855, 2 Irvine, 285; *M'Phail* v. *Campbell*, 1861, H. C. 1861, 4 Irvine, 18.

The competency of appeal in particular cases, and how far it is barred by the acquiescence of the person convicted, has raised much discussion. The law appears to be that each case must be decided by its circumstances (*p*). It is no objection to the review of a sentence, that the accused has already paid the penalty imposed, or undergone the whole or part of the imprisonment awarded (*q*).

Review is admitted on points of law only. This rule is always inferred when the statute appoints no record of the evidence to be kept—a provision, which is held to exclude review upon the facts (*r*). The admission of incompetent, or the refusal of competent evidence, is a sufficient ground of appeal. But the question arises, whether a judgment is to be set aside, if any error, however trifling, has been committed by the judge; or any piece of evidence, however slight or apparently irrelevant, has been admitted or rejected. The rule, which has been established on this subject, is, that when a case has been tried before a jury, the improper admission or rejection of the smallest item of evidence is sufficient to invalidate the verdict and sentence, inasmuch as it is impossible to say what effect the evidence may have had on the minds of the jury. In reviewing the sentence of an inferior judge, however, the Court are accustomed to adopt a more independent position. If evidence has been unduly received, they will consider the weight and import of the objectionable matter, and unless it be in their opinion so material a part of the proof as to affect the conviction, the sentence will not be interfered with (*s*).

Regarding the competency of bringing before the court of appeal objections to the proceedings which might have been stated in the inferior court, but were omitted, there have been

(*p*) Macdonald's *Criminal Law*, 591.

(*q*) Hume, ii. 515; *Christie* v. *Adamson*, 1853, 1 Irvine, 293; *Russell* v. *Colquhoun*, H. C. 1845, 2 Broun 572; *Gillies* v. *Jeffrey*, H. C. 1839, 2 Swinton, 454.

(*r*) *Macphail* v. *Neilson*, H. C. 1837, 1 Swinton, 583.

(*s*) Alison, ii. 30.

some nice distinctions laid down. It has been decided that questions as to citation, questions as to whether the accused was correctly named, questions of admission or rejection of evidence, and other matters of procedure, cannot be entertained as reasons of appeal, unless the objections have been taken in the court below (*t*). The objections must not only have been stated, but also recorded in the court below, unless it is alleged that the judge refused to record the matter. On the other hand, an objection to a sentence of an inferior court, on the ground that the original complaint contained no specification of the *locus delicti*, has been held to be competently stated in the court of appeal, though it had been omitted in the Justice of Peace Court.

All objections founded on must be set forth in the reasons of appeal, and none will be entertained unless appearing there (*u*).

Where a person has been convicted on several charges, any alteration of the judgment of the inferior judge, on a point of law affecting one of the charges, is not a ground for setting aside the decision *in toto;* but the Court will consider what the sentence should be, supposing the conviction on that charge struck out of the record (*x*). An appeal on a point of law is competent to the prosecutor where there has been an acquittal, as well as to the accused where there has been a conviction (*y*). But it has not been decided whether, in case of the acquittal being quashed, the accused can be again put upon his trial. A judgment of the inferior court may not only be sustained or reversed, but may be altered by the court of appeal, to the effect of diminishing or in-

(*t*) Macdonald's *Criminal Law*, 591; *Thorburn* v. *Morrison*, 1853, 1 Irvine, 206; *Steven* v. *Morrison*, 1853, 1 Irvine, 312; *Nimmo* v. *Procurator-Fiscal of Hamilton*, H. C. 16 Nov. 1829, 2 Jurist, 31; *Bennet* v. *Hinchy*, 6 February 1860, 32 Jurist, 476.

(*u*) *Maclean* v. *Macfarlane*, H. C. 1863, 4 Irvine, 351.

(*x*) Alison, ii. 29.

(*y*) *Blair* v. *Mitchell and Malloch*, H. C. 1864, 4 Irvine, 545.

creasing the penalty inflicted; or the case may be remitted to the sheriff or justices for supplementary proof. Expenses may be awarded or refused, at the discretion of the Court; and they must be moved for at the time when judgment is pronounced (*z*).

Prosecutions under the Act of 1862 have been held to be criminal, and not civil, in their nature; and this rule is not the less certain that the prosecution is frequently at the instance of a private individual, other than the public prosecutor. The distinction is important in respect of the admission of the evidence of the accused, and the liability for the support of a convicted person when in prison. The point was decided in the case of *Blair* v. *Mitchell and Malloch* (*a*). Though prosecutions under the Act are of a criminal character, all the offences prohibited by the Act are not necessarily crimes. Many of them do not even presume guilty knowledge; and certain acts are liable to prosecution, which are merely prohibited by the authority of the district boards. Many of the acts appear to be very much on the same footing as those which are declared in police statutes, local and general, to be offences liable to punishment by fine. Some of them do not even require to be committed by the person who is held to be the offender, and against whom the complaint is directed. For instance, in order to constitute the offence of having in one's possession foul or unseasonable salmon, it is not necessary that there should be any guilty knowledge on the part of the individual. The real fault may lie with his fishmonger, or his servant, who has brought the article into his house. These arguments, however, though they may be considered of some force in taking offences under the Act out of the category of crimes, have been properly disregarded in the question of the character of proceeding against offenders. The offence of three or more fishing illegally for salmon

(*z*) *Macphail* v. *Neilson*, H. C. 1837, 1 Swinton, 583.
(*a*) 9 July 1864, 4 Irvine, 545.

at night, is expressly declared by § 27 of the Act of 1862 to be criminal; but in all cases the prosecution is equally of a criminal nature. In the case referred to, where this principle was established, it was decided that in prosecutions under the Act, the person accused is not a competent witness for himself.

Prosecutions under the Tweed Fishery Acts have also been held to be of a criminal nature (*b*).

It has also been decided in the Sheriff Court of Perthshire, that a prisoner convicted of a breach of the Salmon Fisheries' Act, must be alimented during his incarceration by the prison authorities, and not at the expense of the incarcerator. The case of *Robertson* v. *Collins* (*c*) is in apparent contradiction to this rule; but that decision, besides being of doubtful authority, was pronounced in reference to a decision under a different statute. The point is settled conclusively by the 27 & 28 Vict. c. 53, § 28 (Summary Procedure Act).

Where several acts are charged to have been committed, it must depend upon the construction of the statute to which they refer, whether distinct penalties are incurred, and ought to be awarded for each, or whether the several acts form but one aggregate offence, and require but one penalty. The same question is also often to be determined, in regard to the acts of joint offenders, who may in some cases be liable to separate penalties, sometimes to one collective penalty. Where offences are committed, consisting of several acts, there is sometimes considerable difficulty in determining whether they are to be considered as separate offences, or as constituting together a single transgression of the law. Where distinct and complete acts are committed by the same person, but on different days, no ambiguity can arise; for, under such circumstances, it is clear that the offences are distinct, and subject to separate penalties. It has sometimes been supposed, on the authority of English decisions under

(*b*) *Scott* v. *Stevenson*, 1854, 1 Irvine, 603.
(*c*) 16 Feb. 1837, 15 D. 572.

the Poaching Acts, that there can only be one offence committed on one day, though there may be several takings, or attempts to take, fish on the same day; but the words of the Act do not seem necessarily to imply any such limitation, and the decisions (*d*) are not decisive of the question. But where there is a repetition of similar acts, either in the same, or in different localities, some difficulty may be experienced, though even here, if the depredations be commenced at night, and continued till after twelve o'clock, there might be difficulty in sustaining an indictment for two separate offences; the offence may have been continued without interruption, and the circumstance that the commencement of a new day took place during the operation, does not of course practically break up the offence into two. The circumstances under which the point may arise are so various, that it is impossible to lay down any general rule; each case must necessarily be decided upon its own merits, and in accordance with the wording of the statute which is applicable to it. As regards the offence of fishing for or taking salmon during the annual close time, by any means other than the rod and line,—an offence which, by the 11th section of the Act of 1862, is made punishable by a penalty not exceeding £5, the offender being liable to a supplementary penalty not exceeding £2 for every fish so taken. If the fishing be by means of net and coble, each haul of the net, especially if they be in different parts of the water, might possibly be treated as a separate offence; but if the same method of fishing be used, and the same parties engaged in it, it would probably be better to charge the repeated acts as a single contravention of the statute, leaving it to the magistrate to inflict a proportionately heavy penalty. If the fishing be by means of rod and line, at a period not sanctioned by the commissioners, or during Sunday, it would require strong evidence to establish a charge of

(*d*) *R.* v. *Lovet*, 7 T. R. 152.

separate offences, where the fishing had been on one day only; though circumstances can no doubt be imagined which would warrant a charge of separate offences. The same remarks apply to the statutory offences of fishing for salmon with a net having a mesh contrary to the commissioners' bye-law on that subject, and to the offence of obstructing or impeding the passage of salmon contrary to any bye-law of the commissioners; and, in fact, to all the offences enumerated in the 11th section of the statute.

CHAPTER XI.

SALE AND EXPORTATION OF FISH.

IN accordance with the policy which our ancestors considered to be most conducive to the interests of trade, the sale and exportation of fish was formerly the subject of numerous restrictive enactments. The public sale of fish in the king's market was regulated—when it was lawful, or otherwise, to take the fish to a dwelling-house—the unlawfulness of buying to sell again at the sea coast—buying to sell again, or cutting in pieces before the first hour in summer and the third in winter—selling at the water instead of the market—the packing of the fish and the size of the barrels—were all matters regulated by statute (*a*). These enactments, however, have all been repealed or have fallen into desuetude; and, subject to certain plain rules which have been enacted for the preservation of the supply of fish, full liberty is enjoyed by the lieges. In the case of herrings alone, certain restrictions contrary to the spirit of modern legislation, but necessary perhaps from the peculiarities of the trade, have been maintained (*vide* Chapter II.). The markets were formerly protected against fish supplied by foreigners, but all import duties are now abolished (*b*), and foreign fish of any kind may

(*a*) Hutcheson's *Justice of the Peace*, ii. p. 599–601; Leges Burgorum, c. 67, 72, 79.

(*b*) Mr G. Ridpath, in his evidence before the House of Lords Committee of 1860, handed in a statement estimating the salmon imported into the London market, for the twenty-six years between 1834 and 1860, at 714,794 boxes of 112 lbs. each. Of these, he calculated that 602,783 had come from Scotland, 98,716 from Ireland,

now be sold in Great Britain. The Sea Fisheries' Act of 1868 (§ 19) removes all restrictions upon the sale of sea fish; and admits the boats of the French fishermen to certain specified ports of Great Britain for the sale of their fish (*c*).

The sale of salmon during close time is prohibited by the Salmon Fisheries' Act of 1862 (*d*); and it is enacted that every person who sells or exposes for sale fresh salmon taken within the limits of the Act during the period between the commencement of the latest, and the termination of the earliest, annual close time which may have been fixed for any district, shall for every such offence be liable to a penalty not exceeding £5. In the case of other offences under the Act, such as the illegal killing of fish, an additional penalty of £2 is imposed for every fish so taken, as well as the forfeiture of implements used. The offence of selling salmon in close time is enumerated in the same clause as the other offences to which the clause attaches the additional penalty for every fish taken, and, from the structure of the Act, the additional penalty certainly applies to it: but it is doubtful if the nature of the offence would admit of this additional penalty being enforced. As regards the question, whether more than one offence is committed, where several salmon are at the same time exposed for sale, it is thought that it is impossible to consider that more than a single offence has been committed; inasmuch as the words of the Act define the offence as the exposing for sale during close time 'fresh 'salmon,' and not a single fresh salmon. The exposure for sale, therefore, of any number of salmon at one time will probably be held to constitute a single offence; and not

8838 from Holland, 2642 from Norway, and 1815 from Wales. The total averaged about the same number during the latter years of this period as during the former; but it must be remembered that these returns apply to the London market alone, the supply to which is affected by a variety of circumstances.

(*c*) The ports in Scotland thrown open to the French fishermen for the sale of their fish are Aberdeen, Glasgow, Greenock, Leith, and Wick.

(*d*) 25 & 26 Vict. c. 97, § 11.

only is the chief penalty of £5 only once incurred, but the additional or supplementary penalty of £2 is not incurred at all. That supplementary penalty is, by the Act, imposed 'for every salmon taken or killed contrary to the provi-'sions of the Act, or of any bye-law made by the com-'missioners under the authority of the Act.' In the mere exposure of salmon for sale, there is no killing or taking, to bring the offence under the words of the Act; and, moreover, the supplementary penalty being imposed by the Act for a supplementary offence, namely, the possession of salmon illegally captured, distinct from the primary offence of capturing them, and only one kind of offence being committed by the exposure of salmon for sale, the double penalty would be inapplicable.

If, however, a person not only expose for sale, but actually sell, more than one salmon to different purchasers, a difficulty might arise. For the reasons stated in the preceding paragraph, it is thought that the supplementary £2 penalty could not be inflicted, but the seller would probably be liable to the chief penalty for every sale which he effected. Each separate sale must be considered as a distinct offence; and this, perhaps, though the various sales be effected on the same day (*e*).

(*e*) The light which the English authorities throw upon this point is a doubtful one. In *Crepps* v. *Durden*, Cowp. 640; 1 Smith's L. C. 378, which was a case founded on the statute 29 Ca. II. c. 7, which enacts that no tradesman, etc., shall do or exercise any worldly labour, business, or work of their ordinary calling on the Lord's day, it was held that only one penalty can be incurred by a baker for the exercise of his calling on the Lord's day, though it consisted in separately selling a number of different loaves. The question whether several acts committed on the same day make the offender liable to distinct or cumulative penalties, was much discussed in a case arising on the statute 12 Geo. II. c. 36, which, though it relates to an action and not to a conviction, affords a doctrine applicable to both. That Act makes it unlawful for 'Any person to bring into this kingdom, for sale, any 'book or books first composed, and printed, and published in this country, and 'reprinted in any other country;' and declares, 'That if any person shall import 'or shall sell, publish, or expose to sale, any such books, knowing them to have 'been so reprinted, every such offender, besides forfeiting the said book or books, 'shall forfeit the sum of five pounds, and double the value of every book he shall 'so knowingly sell,' etc. In an action for penalties under this Act, it was held that two penalties were recoverable for selling two books on the same day, provided the

The sale of several salmon to a single purchaser, probably constitutes, under the wording of the Act, only a single offence; and the same may be said of the sale, to any number of purchasers, of a single salmon cut up into a number of pieces.

The period during which it is illegal to sell salmon or expose them for sale, is between the commencement of the latest, and the termination of the earliest close time, which may have been fixed for any district in Scotland; and the period during which the sale or exposure is prohibited, is not merely the close time applicable to the locality in which the sale or exposure take place. The necessity is thus imposed upon those who sell fish, of finding out the dates of the commencement and terminations of the various close seasons fixed by the commissioners, or at least the earliest and latest of them; but reference to the bye-laws of the commissioners in regard to close time (Appendix), as at present fixed, readily shows that the prohibited period for the sale of salmon is from September 10 to February 4.

It is not unlawful, however, even during the close time in Scotland, to expose for sale salmon which have been caught beyond the limits of the Act; and a considerable trade is carried on during this period, in salmon which have been caught in the river Tweed (*f*) or in Holland. The Act expressly provides, that the burden of proving that salmon so sold, or exposed by any person for sale, have been caught beyond the limits of the Act, shall lie on the person selling or exposing the same for sale. The invoice or manifest will form an important item in such evidence.

The expression 'fresh salmon,' which occurs in the clause

sales were distinct, *Brook* v. *Milliken*, 1789, 3 T. R. 509. These decisions demonstrate that the wording of the statute and the special circumstances, must, in each case, be carefully considered.

(*f*) The fishing in the Tweed and its tributaries is open considerably later than the other rivers of Scotland. They are expressly exempted from the operation of the Act of 1862.

just referred to, is used in contradistinction to pickled or cured fish, which can legally be sold at all seasons.

Though the sale or exposure for sale of salmon during close time is illegal, the buying of them is not prohibited. In England, the buyer as well as the seller is liable to a penalty.

A doubt may occur as to whether the close time during which the sale of salmon is illegal applies to the period prohibited both for rod and net, or to the longer period prohibited for net; or, in other words, whether it be illegal to sell salmon during the extended period which is allowed for rod fishing. The wording of the Act, whether it be intentional or not, countenances the idea that, though rod-fishing be legal for the extended period allowed by the commissioners, it is illegal to sell or offer for sale, salmon caught after the regular close time for net-fishing. Salmon which have been caught during the open season may be sold during the close time.

There is no prohibition of the sale of foul or unseasonable salmon, provided the fish be not in the possession of the seller. The capture or possession of the fish is punishable under another clause of the Act.

Salmon Roe.—The sale of salmon roe for the purpose of fishing, as well as the using it, and the possession of it for sale or use, is prohibited (*g*), and the offender, for every such offence, is liable to a penalty of £2, and the forfeiture of the salmon roe in his possession. This prohibition is, by § 34, made applicable to the Tweed and its tributaries. By the wording of this section, the offence is constituted by the use of salmon roe 'for the purpose of fishing;' there is no limitation to salmon fishing, and accordingly, if salmon roe be sold or used to catch any kind of fish whatever, the penalty will be incurred. And if the roe used be that of sea trout, bull trout, or any fish of the salmon kind, which, by the in-

(*g*) 25 & 26 Vict. c. 97, § 12.

terpretation clause of the statute, are all included in the word salmon, the offence is committed. The use or sale, or possession of roe other than that taken from fish of the salmon kind, is not prohibited (*h*). Neither does the use, or sale, or possession, of salmon roe for scientific or other purposes than fishing, constitute the offence.

Exportation of Salmon.—The law prohibiting the sale of foul or unseasonable salmon, or of salmon caught during close time, having been frequently evaded by the exportation for sale in France and other foreign countries, of salmon that cannot legally be sold within the limits of the United Kingdom, an Act (26 & 27 Vict. c. 10) was passed which makes illegal the exportation of unclean or unseasonable salmon, or salmon caught during close time. All salmon so exported, or entered for exportation, are liable to forfeiture, and the person exporting them, or entering them for exportation, is subjected to a penalty not exceeding £5 for each salmon. The Act expressly provides that the burden of proving that any salmon entered for exportation from any part of the United Kingdom to parts beyond seas, between 3d September and 2d February, has not been caught during the close time in England, Ireland, or Scotland, shall lie on the person entering the same for exportation. The 3d September and 2d February are the limits of the universal close time in England; but salmon may be exported between these dates if they are proved to have been caught in districts where the open season extends beyond 3d September, or commences earlier than 2d February. In several districts in Scotland the open season continues till 10th September. It will be observed that it is only in the case of salmon entered for exportation after the 3d September that the burden lies upon

(*h*) It is sometimes difficult to distinguish the roe of salmon from that of other fish. In February 1867, the justices at Kelso convicted a person of this offence, though he averred that the roe was that of a bull trout and not that of a salmon, and though there appeared to be some doubt on the point, the water bailiff, however, swore that the roe was that of salmon. The distinction was immaterial.

the exporter of proving that the fish have been caught in open season. Now, the close time in most of the districts of Scotland commences on the 27th August; but, according to the wording of the Act, it appears that in the case of salmon captured—for example, in the Tay—between the 27th August and 3d September, though this be close time in that river, that if they be entered for exportation, the exporter is not under the necessity of proving them to have been legally caught. In such cases (and it is an omission in the Act that they have not been provided for), the burden of proof will rest with the prosecutor; if he can succeed in proving the fish to have been caught during the close time applicable to the district, the exporter will then be liable to the penalty.

The sale of salmon caught during the extended period allowed by the commissioners for rod fishing, having been explained to be illegal, the exportation of them during that period is also illegal, for the Act of 1863 expressly declares that 'no salmon caught during the time at which the sale of 'salmon is prohibited in the district where it is caught' shall be exported or entered for exportation. Salmon captured by the rod after the close of the net fishing season can thus be legally disposed of in no other manner than by gift.

The penalties for contravention of this Act are recoverable as penalties under the Act of 1862, of which this is an amendment; and within the limits of the Tweed Fisheries' Act, they may be recovered in manner prescribed by the Tweed Fisheries' Act, 1857.

The English Salmon Fisheries' Act of 1865 (28 & 29 Vict. c. 121) contains a clause (§ 65) relating to the exportation of salmon. The Act does not apply to Scotland; but as the offence of exporting unseasonable salmon is usually committed at the English ports, though the fish are caught in Scotland, it is proper that the enactment should be noticed here. The clause provides that 'All salmon intended for ex-'portation shall be entered for that purpose with the proper

'officer of customs at the port or place of intended exporta-
'tion, before shipment thereof; and any salmon shipped or
'exported, or brought to any wharf, quay, or other place for
'exportation, between the third day of September and the
'second day of February following, contrary to this section,
'shall be forfeited, and the person shipping or exporting, or
'bringing the same for exportation, shall be liable to a penalty
'not exceeding two pounds for every salmon so shipped or
'exported, or brought for exportation; and any officer of the
'customs may, between the third day of September and the
'second day of February, open any parcel entered or intended
'for exportation, or brought to any quay, wharf, or other
'place for that purpose, and suspected by him to contain
'salmon, and may detain any salmon found in such parcel
'until proof is given, in manner provided by law, of the
'salmon being such as may legally be exported; and if the
'salmon, before such proof is given, become unfit for human
'food, the officer of customs may destroy the same.'

CHAPTER XII.

POLLUTION OF RIVERS.

THE pollution of rivers is a subject into which there is no occasion to enter, in all its width; but in sō far as it affects the rights of fishing, it is necessary to consider it. At common law, no superior heritor on a stream is entitled to abstract from or pollute the water for the proprietors below, in such a way as to injure the amenity or the utility of the stream, or to poison the fish which frequent their waters. The lower proprietors are entitled to receive the water in the same quantity and the same condition in which it is enjoyed by the heritors above, subject only to the primary uses of the stream, to which each superior heritor is entitled (*a*). A distinction in this respect exists between the rights of proprietors on the banks of a public river and those of proprietors on the banks of a private stream. The public rivers of the country are vested in the crown for public purposes, and the uses which the proprietors or inhabitants on their banks may have of the water are entirely subordinate to these public purposes; but in a private stream, the bed of the stream is the property of the owner of the lands on the banks, and he is entitled to the full use of the water as it passes through his property, subject only to the condition, that he shall suffer it to pass, undiminished in quantity and unimpaired in quality, to his neighbours

(*a*) *Miller* v. *Stein*, 1791, M. 12823; *Russell* v. *Haig*, 1791, M. 12823; *Montgomerie* v. *Findlay*, 9 July 1853, 15 D. 853; *The Mayor of Berwick* v. *L. of Hayning*, 1661, M. 12772. In this case the Court refused to interfere with the draining of a loch into the Tweed, although it was alleged to be injurious to the salmon fishing; but, in the special circumstances, inquiry was ordered.

below. These conditions, however, are necessarily subject to some modification, because, even in the ordinary uses of water, there is a certain unavoidable consumption of the body of the water, and because it is impossible to prevent running streams from receiving impurities, to some extent, from natural causes, and from causes incidental to the presence of inhabitants on their banks. But an upper proprietor is not entitled to throw impurities, and especially artificial impurities, into the stream, so as to pollute the water as it passes through the estate of a lower proprietor; and the lower proprietor is entitled to complain of such pollution as renders the water unfit for primary purposes; but it will be a good defence against such a complaint, that the stream has been from time immemorial, devoted to secondary purposes, such as manufactories, so as to supersede and abrogate the primary purposes (*b*).

As regards the statutory protection of rivers from poisoning, the Waterworks' Act (10 & 11 Vict. c. 17) contains clauses which, though not intended specially for the protection of fisheries, may sometimes be used for that purpose. By sections 61–65, the pollution of any stream belonging to waterworks or reservoirs is prohibited, and made punishable by a penalty of £5, and £1 for each day during which the offence is continued; and owners of gas-works, who permit any foul substance or liquid to flow into such waters, are subjected to a fine of £200, and £20 a day while the offence is continued.

The Nuisances Removal (Scotland) Act of 1856 (*c*), also contains clauses prohibiting the pollution or poisoning of waters with gas, naphtha, vitriol, or dye-stuffs, or their refuse. A penalty of £50 is imposed for every such offence, and of £5 for every day during which it is continued; which penalties may be sued for either by the person suffering from the nuisance, or by the local authority.

(*b*) *Per* Lord J.-C. Inglis in *Duke of Buccleuch* v. *Cowan, etc.*, 21 Dec. 1866, 5 Macph. 214.

(*c*) 19 & 20 Vict. c. 103, § 19.

The Salmon Fisheries' Act of 1862 (25 & 26 Vict. c. 97) has a special clause (§ 13), prohibiting, and providing penalties for, this offence. It enacts, that every person who causes, or knowingly permits to flow, or puts, or knowingly permits to be put, into any river containing salmon, any liquid or solid matter, poisonous or deleterious to salmon, or who shall discharge into any river sawdust, to an extent injurious to any salmon fishery, shall be liable to a penalty not exceeding £5 for the first offence; for the second offence, a penalty not exceeding £10, as well as £2 for every day during which the offence is continued; and for the third, or any subsequent offence, a penalty not exceeding £20, as well as £5 for every day during which the offence is continued.

In order to constitute the offence, the deleterious matter must be in such quantity as is likely to destroy the fish, though it is not necessary to prove that any fish have actually been killed by it. The enactment will apply to every stream, however small, where parr or salmon are to be found. A master, if he be cognizant of it, will be liable for the act of his servant; and the offence will be constituted if the poisonous matter be permitted to flow into the stream, either through carelessness in providing sufficient means to prevent it, or even though the party has done all that is in his power to prevent it. If the poisonous matter escape into the water in spite of the utmost efforts to dispose of it otherwise, the party will be liable to the penalty, provided the act is not done in the exercise of any right to which he is by law entitled. Such a right may, of course, exist, but distinct evidence of it will be required in order to remove the case from the common and statutory law which has been recited (*d*). The same clause of the Act declares that

(*d*) A doubt has been expressed on the English Bench by Chief-Justice Cockburn, whether a person can be said to *suffer* or *permit* the poisonous matter to flow into a stream, when he cannot prevent it; *Hopkins* v. *Birmingham Gas Co.*, 1860, 6 Hurlstone & Norman, 251.

no person shall be subject to the foregoing penalties for any act done in the exercise of any right to which he is by law entitled, if he prove to the satisfaction of the Court before whom he is tried, that he has used the best practicable means, within a reasonable cost, to dispose of or to render harmless the liquid or solid matter so permitted to flow or to be put into waters; but nothing contained in the Act is to have the effect of preventing any person from acquiring a legal right in cases where he would have acquired it if the Act had not been passed, or exempt any person from any punishment to which he would otherwise be subject, or legalize any act or default that would, but for the Act, be contrary to law.

It will be observed, that unless evidence of right to pollute the water can be produced, no attempt, however strenuous, to abate the nuisance, will exempt the offender from liability to the penalty. If the party, however, has established a right, by prescription or otherwise, to pour his refuse or other matter into the water, he will be relieved from liability if he can prove that he has used the best practicable means, within a reasonable cost, to abate the nuisance. The corresponding clause in the English Salmon Fisheries' Act of 1861 mentions £100 as the sum which the party is bound to expend in remedying the matter, and evidence of having done which, relieve him from liability; but there is no reason to suppose that in Scotland, the Court would extend or limit its requirements to this figure.

Prescription is the method by which a right to pour deleterious matter into a stream is usually acquired; and if the other heritors along the stream acquiesce for forty years in a practice against which, at its commencement, they would have been entitled to complain, an indefeasible right, limited of course by express prohibitory enactments, will be established. The ordinary rules of prescriptive possession apply, and interruption may take place in the usual manner. No

prescription, however, will relieve any one from the prohibitions and penalties of this Act, and the sole advantage which the prescriptive right will confer upon its possessor, will be to relieve him from its penalties in case he has used the best practicable means, within a reasonable cost, to abate the nuisance. The offence may be prosecuted at the instance of the district board, or of any other person, whether interested or not, and there seems no doubt that a proprietor even against whom prescription had run, and who would be debarred from proceeding against the offender in a civil action, might competently institute proceedings under the Act.

The offence, like others prohibited by the Act, may be prosecuted before the sheriff, or two justices, and on proof of the fact, conviction will pass, unless exemption be claimed on the ground of prescriptive right, and compliance with the conditions of the Act. *Primâ facie* evidence of forty years' possession, or the production of a written title, as well as evidence of attempted abatement, will remove the case from the jurisdiction of the justices; and slight proof on these matters will authorize them in declining to deal with the case. The case, if dismissed by the sheriff or the justices, on the ground of *primâ facie* right, may then be brought before a higher court, and the validity of the party's right, the effectiveness of the possession claimed by him, and the sufficiency of the attempts to remedy may be determined by a jury or a judge. The question of sufficiency will, of course, depend on the circumstances of each case; and greater outlay and greater exertions will be required where the manufactories or operations causing the nuisance are extensive. If his legal right to pollute the water be established, and his attempts at a remedy be found to fulfil the requirements of the Act, the prosecution under the Act will, of course, be abandoned; but if the judgment or the verdict pronounce his right invalid, or his attempts at remedy insufficient, the pro-

secution may then be resumed, and, if warranted by the facts, a conviction will be obtained.

The provision in the clause, that nothing contained therein shall prevent any person from acquiring a legal right in cases where he would have acquired it if the Act had not been passed, may have various effects. If a person commit the offence prohibited by the Act, and poison the waters under circumstances which render him liable to the penalties provided, but if he continue the prohibited operations without prosecution for a period of forty years, his right to do so will then become indefeasible, a result which could not occur in the absence of this provision in the Act. In ordinary circumstances, an act or a course of conduct which is illegal either at common law or by statutory enactment, cannot, by any length of continuance, become legal; but the peculiar law is here created, that a legal right may be established, to conduct an operation which the Act itself declares to be illegal. A more difficult question may arise where a prosecution for this offence is instituted under the Act, but where, in spite of the prosecution, and perhaps of a conviction, the operations are continued till the prescriptive period is complete. Will such a prosecution, in view of this provision in the clause, constitute an interruption in the course of prescription, such as to prevent a right being so acquired? The clause provides that nothing in the Act shall interfere with the acquisition of a legal right to poison the water; and though a prosecution at law is held in ordinary cases to constitute the most effective of all interruptions, it appears that to deem it so in the case we are speaking of, would be to violate the provision in the statute. A prosecution under the statute must be considered as a consequence and creature of the statute, and is thus expressly precluded from having any effect in preventing the acquisition of a legal right.

The clause also contains a provision, that nothing contained therein shall exempt any person from any punishment

to which he would otherwise be subject, or legalize any act or default that would, but for the Act, be contrary to law. Accordingly, it remains optional for a prosecutor to sue for penalties under this Act, or, in cases where the circumstances warrant it, under the Nuisance Acts before referred to.

The Tweed Act of 1857 contains special clauses relating to the pollution of the stream, and the matter, as regards that river is separately discussed (*e*).

(*e*) A bill was introduced into Parliament in 1864 by the Lord Advocate (Moncreiff), prohibiting the discharge of foul water into rivers, except under a certificate by the sheriff proceeding on a report by men of skill, that the best practicable means, at a reasonable cost, was adopted for the prevention of the nuisance. The bill, however, proved abortive, in consequence of the opposition of the manufacturing interest.

CHAPTER XIII.

SALMON FISHING—DISTRICT BOARDS.

THE administration of matters under the Salmon Fishery Acts, is, in each district, defined by the bye-laws of the commissioners, intrusted to a District Board. The election of a District Board is to be conducted as follows (*a*). Within three months of the publication of the bye-law constituting the district, the sheriff-clerk of the county, where the district lies, is to make up a roll of the upper proprietors (*b*), and also of the lower proprietors, in each district. The qualification of an upper proprietor is the property of a fishery (*c*) entered in the valuation roll (*d*) as of the yearly rent or yearly value

(*a*) 25 & 26 Vict. c. 97, § 18.

(*b*) 'A proprietor' is defined by the Act to 'mean and include any person, com-'pany, or corporation, who is the proprietor of a salmon fishery, or who receives, 'or is entitled to receive, the rents of such fishery on his or their own account, or 'as trustee, guardian, or factor for any person, company, or corporation, and shall 'also include her Majesty in right of her crown.' It has been doubted whether or not the word 'factor,' as here defined, was limited to judicial factors, and factors acting for those who are incapable of acting for themselves. The better opinion, however, seems to be, that it extends to private factors appointed by landed proprietors, for the collection of their rents, and to all persons who receive, or are entitled to receive, the rents of a salmon fishery 'as factor for any person, company, 'or corporation;' and that such a person is entitled to have his name entered on the roll of proprietors; and, after being so entered, to exercise all the rights and privileges competent to an actual proprietor, and that he is eligible for election as a member of the District Board under § 18. In order to entitle a factor to act, he should hold a formal deed of factory written on a 30s. stamp.

(*c*) 'Fishery' and 'fisheries' are defined by the Act to mean 'a salmon fishery, 'and salmon fisheries, in any river or estuary, or in the sea.'

(*d*) 'Valuation roll' is defined by the Act to mean 'the valuation roll in force for 'the time, for any county and each of the royal burghs therein, made up under the 'authority of the Public General Act, 17 & 18 Vict. c. 91; or any other Act 'relating to the valuation of lands and heritages in Scotland, which may be in 'force for the time.' The entry in the valuation roll seems to be the only test of value, and proof by witnesses to rebut it seems incompetent.

of £20 or upwards; or, if such fishery be not valued on the valuation roll, of half a mile of frontage to the river (*e*), with a right of salmon fishing; and the qualification of a lower proprietor is the property of a fishery entered in the valuation roll as of the yearly rent or value of £20 or upwards. The qualification of half a mile of frontage is inapplicable in the case of lower proprietors.

In cases where disputes arise as to the qualification of proprietors to be placed upon the roll, the sheriff has power 'to decide summarily, any questions arising on any claim to 'such qualification.' The class of questions over which the sheriff is to have jurisdiction, must evidently be a limited one. Where a right of salmon fishing is averred by a proprietor claiming to be placed upon the roll, and where such right is disputed in point of law by the other proprietor, the question is evidently beyond the jurisdiction of the sheriff, and can be inquired into by the Court of Session only; or, where the accuracy of the entry in the valuation roll is called in question, no power is conferred upon the sheriff under this Act of rectifying the error. The questions which the sheriff is empowered to decide, must relate to such points as the right of particular persons to be enrolled in virtue of their appointment as trustee, factor, etc., for the actual proprietor; or, to such matters of fact, as whether the claimant's titles contain

(*e*) A river is defined by the Act to 'include tributaries and any lake from or 'through which any river flows.' If the fishery be entered on the valuation roll as under the value of £20, there is no qualification, and it does not seem competent, in that case, to aver half a mile of frontage to the river. The question may be raised whether a proprietor, whose property extends for only a quarter of a mile along the river, but who possesses *both banks* of the stream, is duly qualified in respect of his possessing half a mile of frontage. The question has not been decided; but it has been argued that this does not constitute a proper qualification in terms of the Act. This opinion, however, seems scarcely in accordance with the justice of the case; and, with the analogy which may be drawn from the Tweed Act of 1857, which expressly declares that a quarter of a mile of both sides is to be held equivalent to half a mile of one bank. A quarter of a mile at one place, and a quarter of a mile at a different place, whether on the same side of the river or not, if in the hands of the same proprietor, would, it is thought, also afford a qualification.

an express grant of salmon fishing, or whether the claimant's frontage to the river extends for half-a-mile, the heritable right of salmon fishing being undisputed. In the event of any dispute of this kind, the claimant should produce his titles, or the sheriff-clerk should, *ex proprio motu*, call for exhibition of them. Questions of heritable right are proper to the Court of Session. No case has arisen in which the power of the sheriff to adjudicate upon such questions has been decided, but even if it were held competent under the Act, the right of review by the Court of Session is not excluded (*f*).

Where the roll of proprietors has been made up, and the names of proprietors included therein whose right to salmon fishing is questioned, the proper course is to sue a reduction of the roll; and the right to do so is not excluded by the fact that the objectors acquiesced at the time the roll was made up, in the defender's name being included therein (*f*). The right of appeal to the Court of Session against decisions of the sheriff relating to the roll of proprietors, is not excluded.

Any proprietor of salmon fishings in the district, being liable to assessment by the Board, has an interest in the constitution of the Board, and is entitled to object to a proprietor being admitted without the necessary qualification.

The roll is made up by the sheriff-clerk; claims to be enrolled are lodged with him, or he may proceed upon his own information; *primâ facie* evidence of right is sufficient for him. No provision is made by the statute for intimating claims to parties having interest to object in order that they may appear to oppose it. If the sheriff-clerk is satisfied of the claimant's right, he enters him on the roll; if he refuses to do so, the sheriff would be entitled to interfere; but no power is given to the sheriff to entertain questions relating to qualification when once the roll has been made up. When the roll has been made up, and the qualification of any pro-

(*f*) *Colquhoun* v. *Buchanan, etc.*, 29 March 1866, 4 Macph. 682.

prietor entered thereon is objected to, the proper method of procedure is by action of reduction; and actings which might amount to homologation by the objector, will not be sufficient to validate the defender's title to remain upon the roll (*g*). In practice, the sheriff-clerk would do well to intimate to the proprietors, by advertisement or otherwise, the names which he proposes to enter upon the roll; and disputes as to qualification will be summarily decided by the sheriff, if they involve questions which he can properly entertain. If the sheriff-clerk repels the claim of a proprietor to be put upon the roll, a dispute then arises, and the judgment of the sheriff may be taken; and the question may also be submitted to him if a party interested appear to oppose the claim.

After the roll has been made up, the sheriff-clerk is to call a meeting of the upper proprietors, and another meeting of the lower proprietors, after notice of such meeting has been given by advertisement in a local newspaper for two successive weeks. The upper proprietors and lower proprietors are, at such separate meetings, to elect not more than three of their number to be members of the District Board (*h*). Every proprietor of a fishery valued at more than £500 on the valuation roll, has two votes at such election, and an additional vote for every £500 of rental, but not more than four votes in all. A proprietor of a fishery which is not valued on the valuation roll, but who desires a vote at the election of the Board, may obtain the privilege, by having his name entered on the roll of proprietors as the proprietor of a fishery of the

(*g*) *Colquhoun* v. *Buchanan*, *etc.*, 29 March 1866, 4 Macph. 682.

(*h*) It does not appear to be competent for the meeting of proprietors to elect, as a member of the District Board, a mandatory for a proprietor who is not factor for such proprietor. The Act gives power to the 'proprietors' present at the meeting to elect not more than 'three of their number' to be members of the District Board, and the interpretation clause declares that the word 'proprietor,' shall include factors; but it does not say that it shall include mandatories.

If a factor be elected a member of the District Board, and his commission be recalled during the period for which he was elected, his nomination as a member of he District Board falls also, for his qualification expires.

value of £20, and he will be assessed on that sum (*i*). The members so elected, along with the person who is entered on the valuation roll as the largest fishery proprietor in the district (*k*), are to constitute the District Board. The last mentioned proprietor is the chairman of the Board (*l*), and has a deliberative as well as a casting vote. The chairman of each meeting of upper and lower proprietors is to notify the election of the Board to the sheriff-clerk within seven days. The first meeting of the Board must be held within ten days after the first election, at a time and place which the proprietors are to fix at the election meeting; or, in cases where the election of a District Board is not necessary, the first meeting shall take place at a time to be fixed by a majority of the proprietors. Notice of the proposed meeting is to be given by advertisement in a local newspaper for two successive weeks, and the meeting may be held at any time within twenty-one days after the first election of the Board (*m*). In cases where a river is situated in two or more counties, the notices must be given, and the meetings called, in such manner as the sheriffs of such counties jointly shall direct.

The 19th section of the Act provides for the constitution of the Board where the upper proprietors or the lower proprietors are fewer in number than three. In such cases, the

(*i*) § 23.

(*k*) The largest proprietor does not require to be elected, but takes his place by force of the enactment. He is entitled to attend the meeting for election of members of the Board and give his vote, or plurality of votes, for other candidates.

(*l*) If the crown is the largest enrolled proprietor of salmon fishing in the district, and is not represented by a mandatory, the next largest proprietor is chairman.

(*m*) The Act of 1862 contained a provision regarding the first meeting of the Board, which has been repealed by the Salmon Fisheries' Amendment Act 1863, 26 & 27 Vict. c. 50, § 2. The original provision was, that after the election of the Board had been notified to the sheriff-clerk, 'the sheriff shall thereafter summon the 'first meeting of such Board for such day and such place as he may fix.' This regulation was found to be inconsistent with the subsequent directions of the Act, and the procedure above narrated was appointed. The Amendment Act, as well as the Act of 1862, is printed in the Appendix.

Board is to consist of an equal number elected in the manner described above (*n*), along with the proprietor having the largest valuation, who is chairman of the Board. If the proprietor who has the largest valuation is the sole upper or the sole lower proprietor, he has two votes on the Board; and if there is only one proprietor in any district, he alone possesses all the powers of the Board.

Mandatories may be appointed by proprietors of a fishery, whether they are the Commissioners of Woods and Forests in right of the crown, or a corporation, or a company, or a private proprietor. The mandate must be in writing (*o*), and the mandatory may attend, act, and vote at any meeting of proprietors. The mandate subsists until recalled (*p*). The right to name mandatories does not extend to meetings of the District Board, but is limited to meetings of proprietors. Accordingly, if a proprietor be elected a member of the District Board, he cannot, in his absence, be represented by a mandatory, or even by his factor. There seems to be no incompetency in one person acting as a mandatory for several persons at the meeting of proprietors.

The expenses incurred by the sheriff-clerk, and a reason-

(*n*) There may be cases where, for instance, there is only one lower proprietor, and more than three upper proprietors, and as applying to such the expression 'equal number' is somewhat equivocal; but as the principle upon which the creation of the District Board is regulated by § 18 appears to be equality of representation as between the upper and lower proprietors, the proper course in the case supposed, is to construe the words 'an equal number elected as aforesaid,' as limiting the upper proprietors to the election of one of their number only, as a member of the District Board. And if the one lower proprietor is also the largest assessed proprietor on the roll, he will be entitled to act as chairman of the Board.

(*o*) The mandate does not seem to require a stamp. The stamp duty under the Acts 7 & 8 Vict. c. 21, 19 & 20 Vict. c. 81, and 24 & 25 Vict. c. 91, does not apply to proxies for the appointment of mandatories to attend meetings of salmon fishery proprietors situated in several parishes; and the case of *Davidson* v. *M'Gregor*, 27 Feb. 1850, 12 D. 789, appears to establish that mandates for meetings of heritors at common law do not require a stamp.

(*p*) 25 & 26 Vict. c. 97, § 20. It has been decided in the Sheriff-Court that the minutes of meeting need not necessarily bear that the written mandates were produced. *Clerk of the District Board of the River Girvan* v. *Kennedy*, Ayr 22 April 1867 (not reported).

able remuneration for his trouble, which is to be fixed by the sheriff, are to be paid to him out of the assessment levied by the Board (*q*). Regular books and accounts are to be kept.

The Board may sue or be sued in name of their clerk; or the Board may sue in name of its members, and in that case the action should be brought in the names of all the members of the Board, and not merely of a quorum of their number. A quorum validly represents the Board at meetings, but it is not entitled to act for it in all cases. A resolution of a quorum at a regularly constituted meeting of the Board, is a resolution of the Board itself, and may authorize the use of the names of the whole members of the Board; but a mere quorum, unless it has acted at a Board meeting, has no recognized position. If the Board consists of more than six members, three is a quorum; if there are fewer than six members, two is a quorum.

The powers of the District Boards are chiefly administrative, and any regulations which they make for the preservation of the fisheries are subject to the provisions of the Act and the bye-laws of the commissioners. They are empowered to appoint a clerk, and constables, water-bailiffs, watchers, and other officers, as they may think fit, to prescribe their duties, and to remove them at pleasure; and they may combine with other districts for the purposes of the Act, and in maintaining a common staff of officers for the preservation and protection of the fisheries; or they may make arrangements with the police committee of the county for the purpose of paying additional constables for the protection of the fisheries.

All regulations made by the District Boards must be reported to, and approved of by the Secretary of State; and, in order to be legal, they must not interfere with any vested

(*q*) § 21.

right of property, and must not imply any encroachment or trespass on private property. The approval of the Secretary of State, though necessary to give effect to a bye-law, will not have the effect of rendering it legal, if it invade any established right of property; and a plea to this effect, if supported by evidence, is a sufficient defence to a prosecution for penalties under a bye-law. *Primâ facie* evidence of a legal right, if produced in answer to such a prosecution, will suffice to remove the case to a higher court, where the question of right can be tried. Regulations made by a District Board may not interfere with, or destroy the effect of bye-laws issued by the commissioners (*r*).

As well as issuing bye-laws and regulations for the preservation of the fisheries, the District Board may enact that any person contravening such bye-laws or regulations, shall be liable for every such offence to a penalty not exceeding £2; and such penalty may be sued for and recovered in the same manner as other penalties under the Act (*s*).

The District Board has power to levy an assessment for the purposes of the Act on the proprietors of fisheries in the district, in proportion to the yearly rent or yearly value of their fisheries, as entered in the valuation roll. A proprietor, whose fishery is not entered in the valuation roll, but who desires a vote at the election of the Board, may obtain the privilege, by allowing his name to be entered as the proprietor of a fishery to the value of £20; and he will be assessed on that sum. The fishery assessments may be imposed, collected, and recovered in the same way as assessments under the Police Act of 1857 (20 & 21 Vict. c. 72, §§ 29–34), that is to say, they are payable for the period from Whitsunday to Whitsunday; they may be levied either on the proprietor or tenant, but the tenant, if he pays the assessment, may deduct the amount from his rent; they are re-

(*r*) 25 & 26 Vict. c. 97, § 22. (*s*) § 25.

coverable by summary warrant; and any dispute relating to them may be decided in a summary manner, and finally, in the Sheriff's Small Debt Court. For the purpose of recovering the fishery assessments, the District Boards have the same powers as are conferred on the Commissioners of Supply by the Act referred to (*t*).

The District Boards continue in office for three years, and vacancies occurring during that period, are filled up by the Board until the next meeting of proprietors is held. Members of the Board are eligible for re-election. The new Board is elected in the same manner as the original Board, the meetings of the upper and lower proprietors for its election being called by advertisement by the clerk as specified. The meetings of the upper and lower proprietors for the election of a new Board, are authorized to take such steps as they think proper for auditing and attesting the accounts of the outgoing Board (*u*).

In cases where no District Board has been constituted under the provisions of the Act of 1862, the commissioners, during the subsistence of their office, were empowered, on the requisition of any proprietor of salmon fisheries within the district, to re-issue a bye-law constituting the district; and within three months of the re-issue of such bye-law, a Board may be formed under the same conditions and with the same powers as Boards constituted in pursuance of the bye-law at its first issue (*x*).

(*t*) 25 & 26 Vict. c. 97, § 23.

(*u*) § 24. It has been decided in the Sheriff Court of Ayrshire, that the appointment of a clerk does not fall at the conclusion of the term of office of the Board which has nominated him. He does not retire along with the Board at the end of three years, but continues to act until he is removed. *Clerk of District Board of River Girvan* v. *Kennedy*, 22 April 1867 (not reported).

(*x*) 27 & 28 Vict. c. 118, § 3.

CHAPTER XIV.

BYE-LAWS OF THE SALMON FISHERY COMMISSIONERS.

BY § 5 of the general Salmon Fisheries Act of 1862 (25 & 26 Vict. c. 97), the Home Secretary is empowered to appoint commissioners to carry out the purposes of the Act; and by §§ 15 & 16 the commissioners are authorized to issue bye-laws (*a*) on the matters specified in § 6, namely,—

(1) To fix and define, for the purposes of the Act, and the other Acts relating to salmon and salmon fisheries in Scotland, the natural limits which divide each river in Scotland (including the estuary thereof) from the sea (*b*), in so far as

(*a*) 'Bye-law' and 'bye-laws' includes all rules, orders, and regulations made by the commissioners under the authority of the Act (§ 2).

The bye-laws fixing the limits of each district, and the bye-laws fixing the boundary on each river, between upper and lower proprietors, were to be issued before 1st January 1863 (§ 15); and the bye-laws on other matters were to be issued before 1st January 1864 (§ 16). The period was extended, as regards the latter class of bye-laws, till 1st January 1865 (26 & 27 Vict. c. 50, § 1); and again extended, as regards both classes of bye-laws, till 1st January 1866 (27 & 28 Vict. c. 118, § 1); and again extended, as regards both classes of bye-laws, till 1st January 1867 (28 & 29 Vict. c. 119).

(*b*) In most cases this line is defined by certain natural limits; but many rivers, especially those on the east coast, having no regular estuaries, and some having shifting mouths, through banks of sand or gravel, their limits are defined by a portion of a circle, having a radius varying from 200 to 400 yards, drawn from a centre placed in the middle of the river at low water at spring tides, and tangent lines drawn thence at right angles to, or to the nearest point in, the shore at high water. The rivers which have been treated in this way are noted in the Appendix.

In some cases, the Solway for example, a common estuary has been ascribed to several rivers flowing into it.

The effect of a bye-law, fixing the limits of an estuary, is simply to declare the limits within which fixed engines are illegal under the old Acts,—a function previously performed by the verdict of a jury. A bye-law, which merely defines the limits of an estuary, has not of itself the effect of subjecting to the penalties of the Act a person using stake nets within the limits.

the same may not be already fixed by statute or judicial decision (*c*).

(2) To fix, for the purposes of the Act, the limits of the Solway Firth, having regard to the Act 44 Geo. III. c. 45 (The Solway Act) (*d*).

(3) To fix, for the purposes of the Act, the limits of every district, and the portions of the sea coast adjoining to the mouth or estuary of any river, to be included in such district (*e*).

(4) To fix, for the purposes of the Act, a point on each river (including the estuary thereof), below which the proprietors of fisheries shall be lower proprietors, and above, which the proprietors of fisheries shall be upper proprietors.

(5) To determine, subject to the provisions of this Act, at what dates the annual close time for every district shall commence and terminate, and at what periods, subsequent to the commencement and prior to the termination of the annual close time, it shall be lawful to fish for and take salmon with the rod and line; provided that the number of days during which such annual close time shall continue shall be the same as regards every district (*f*).

(6) To make general regulations with regard to the following matters, viz.:—

(*c*) It does not seem very clear whether the limits of an estuary can be said to have been fixed by judicial decision, so as to prevent the commissioners from settling it anew by a bye-law, when the decision has merely been one settling a question of right between two parties to a suit. Such a decision can scarcely affect any one but the parties themselves; and, in point of fact, the commissioners have, in all cases, defined for themselves the limits of each estuary.

(*d*) See Chapter XVII.

(*e*) It might appear, from the wording of this clause, that each district must necessarily contain a portion of sea coast, but the bye-law will not be invalidated by the circumstance that there is no part of the district which can strictly be so described. In the district constituted for the river Beauly, there cannot, strictly speaking, be said to be any sea coast, for the shores of the Beauly Firth must be considered as estuary, inasmuch as they lie within, or to the landward of, other waters which are defined to be estuary, viz., the estuary of the Ness.

(*f*) See p. 180.

The due observance of the weekly close time (*g*).

The construction and use of cruives (*h*).

The construction and alteration of mill-dams or lades, or water-wheels, so as to afford a reasonable means for the passage of salmon (*i*).

The meshes of nets, so that they shall not intercept smolts or salmon fry (*k*).

Obstructions in rivers or estuaries to the passage of salmon (*l*).

Provided that such regulations shall not interfere with any rights held at the time of the passing of this Act, under royal grant or charter, as possessed for time immemorial (*m*).

With regard to the visitation, by the commissioners, of the various districts of Scotland, and the bye-laws to be issued by them concerning the limits of the several districts, and the boundary between the upper and lower proprietors, the procedure is directed by the 14th and 15th clauses of the Act. The commissioners are directed, after due notice given in the newspapers of the district, to visit and report on the several estuaries and rivers of Scotland. Bye-laws are to be issued by them, copies of which are to be sent to the sheriff-clerk of each county to which the bye-law is applicable. The bye-law is to be advertised for two successive weeks in a newspaper of the district; and any person whose interests may be affected thereby, may appeal to the Secretary of State, who, after a month's interval, may confirm or disapprove the same; the bye-law, after such confirmation, and after publication in the Edinburgh Gazette, becomes legal and binding. In districts in which, by reason of their inconsiderable size, the commissioners have considered it superfluous to issue bye-

(*g*) P. 182. (*h*) P. 175. (*i*) P. 165. (*k*) P. 195. (*l*) P. 196.

(*m*) It is a little doubtful, from the construction of this clause, to how many of the matters regulated by § 6 this proviso extends. It must be held, however, as applying only to the sub-division (6), immediately preceding, and not to the whole section 6.

laws, they may proceed to do so on the requisition of six proprietors of fisheries in the district (*n*).

With regard to bye-laws concerning the other matters which are to be regulated by the commissioners, that is, bye-laws fixing the natural limits which divide each river and its estuary from the sea, bye-laws fixing the limits of the Solway, bye-laws fixing the annual close time for net and for rod, and bye-laws making general regulations as to the observance of the weekly close time, the construction and use of cruives, the construction and alteration of mill-dams or lades, and water-wheels, the meshes of nets, and obstructions generally, the commissioners are directed to issue bye-laws on or before the 1st of January 1864 (*o*). The bye-laws, before they are reported to the Secretary of State for ratification, must be communicated to the District Board, that the Board may have an opportunity of making any representation to the commissioners concerning them; a copy must be sent to the sheriff-clerk of each county, to any district of which the bye-laws are applicable, and the bye-law must be advertised by him for two successive weeks in a local newspaper. Any person interested may appeal to the Secretary of State, if he considered himself aggrieved by the bye-law, and within four months (*p*), the Secretary of State shall confirm or disapprove the same. The bye-law, when approved or altered, shall be published in the 'Edinburgh Gazette,' and then becomes legal and binding (*q*).

As regards the notice of bye-laws which is required to be given to the District Board, the Salmon Fisheries' Amendment

(*n*) 25 & 26 Vict. c. 97, § 15.

(*o*) The time was extended to 1st Jan. 1865, by 26 & 27 Vict. c. 50. It was further extended to 1st Jan. 1866 by 27 & 28 Vict. c. 118; and subsequently extended to 1st Jan. 1867 by 28 & 29 Vict. c. 119.

(*p*) By § 2 of the Salmon Fisheries' Amendment Act, 1864, 27 & 28 Vict. c. 118, the Secretary of State was empowered 'to confirm any bye-laws made under the 'Act of 1862, and the Continuance Acts, notwithstanding the period therein pre-'scribed for such confirmation having elapsed at any period prior to 1st Jan. 1865.'

(*q*) 25 & 26 Vict. c. 97, § 16.

Act, 1864 (27 & 28 Vict. c. 118, § 3), makes provision for cases where a District Board has not been constituted. In such cases 'the commissioners may, on the requisition of any pro-'prietor of salmon fisheries within such district, re-issue a 'bye-law constituting the district; and the commissioners, 'sheriff, and sheriff-clerk, shall thereupon take all the pro-'ceedings prescribed by the Act of 1862 (*r*) with respect to 'the formation of District Boards; and such Boards, when so 'formed, shall have all the powers and authorities conferred 'on or competent to any District Board' (*s*).

As regards the notice of bye-laws which is, previously to their being issued, to be given to the District Board, the Salmon Fisheries' Amendment Act, 1864 (27 & 28 Vict. c. 118, § 4), provides for cases where no District Board has been formed. In such cases, 'the commissioners may make bye-laws in 'regard to the whole matters specified in the 6th section of 'the Act of 1862; and on compliance with the whole other 'provisions relating to the issue of bye-laws, the Secretary 'of State may approve, alter, or disapprove of such bye-laws, 'and the same, as altered or approved of by him, shall be as 'legal and binding on all concerned, as if they had been pre-'viously communicated to a District Board.'

The commissioners are empowered, by the 17th section of the Act, to cite witnesses and havers, and to compel their attendance by means of a warrant from the sheriff.

Obedience to the bye-laws of the commissioners, and the regulations of the District Board may be enforced by the sheriff. A summary petition in the ordinary form may be presented to him by the clerk to the Board, and he may take such proceedings or make such orders thereupon as he shall think just (*t*).

The whole of the bye-laws issued by the commissioners are printed in the Appendix.

(*r*) 25 & 26 Vict. c. 97, § 18. (*s*) § 16. (*t*) 25 & 26 Vict. c. 97, § 29.

CHAPTER XV.

TROUT FISHING.

THE right of trout fishing is not a separate feudal estate, like salmon fishing. Fishing of all kinds was originally, like hunting, a common right, and except in the case of those kinds of fishings, such as salmon, oysters, mussels, etc., which in process of time have come to be considered as *inter regalia*, it still is so, except where it has been acquired by an individual in a manner recognised by law (*a*). But the *jura publica*—rights common or public—were, by the feudal law, intrusted to the sovereign as superior of the whole realm; and at the present day, the law stands with regard to fishings the same as with other subjects of property, that exclusive rights thereto may be granted to any individual among the lieges. Such an exclusive right, moreover, does not, in the case of trout fishing in private rivers, require express grant, and the public right may be defeated by presumption. The case of salmon fishing, as we have seen, is different; and a title which would be insufficient to convey the one is considered valid to alienate the other. As regards the *jus regale* of salmon fishing, which the crown holds for its own emolument, the sovereign is not divested of it except by express grant, or what is equivalent to express grant; but as regards the right of trout fishing, the sovereign may be divested of it

(*a*) Stair, ii. 1. 5; ii. 3. 69 and 76; Craig, i. 16. 38; Opinion of Lord Justice-Clerk in *Fergusson* v. *Shirreff*, 18th July 1844, 6 D. 1364.

without any such formal title. The right of trout fishing does not require a special grant; but, though it is distinguishable from the mere natural accessories of the subject, it passes, in the case of private rivers, and in the absence of special grant to another, as part and pertinent of adjacent lands (*b*). The phrase *cum piscationibus* even is not necessary to transfer it. Prescriptive possession is not necessary to complete the right (*c*). It cannot be lost merely by disuse, being *res meræ facultatis;* but may, of course, be defeated by express title in another, or by a general title followed by prescriptive possession founded on exclusion, and not on mere abstinence by the party against whom the prescription is to run (*d*).

The right of trout fishing in private streams being a pertinent of the adjacent lands, requires no express mention for its conveyance; *a fortiori* a mention of fishings in the tenendas clause of a charter constitutes a good title. But if the fishings are not naturally a part and pertinent of the subjects conveyed, such a title will not be a sufficient conveyance; it will not transfer fishings at a distance from or unconnected with the lands conveyed, nor will it give a right to fishings *ex adverso* the lands of another (*e*).

To establish a right of trout fishing in a private stream or loch, a written title, either to the fishings or to the adjacent lands, is necessary; at least such a right cannot be established by the public merely by proof of usage for the prescriptive period, as against a proprietor producing a title to a loch and fishings therein (*f*).

The exclusive right to trout fishing, which is held as a pertinent by the proprietor of the adjacent lands, does not

(*b*) *Carmichael* v. *Colquhoun*, 1787, M. 9645; *Macdonald* v. *Farquharson*, 14 Dec. 1836, 15 S. 259.

(*c*) *Mackenzie* v. *Rose*, 26 May 1830, 8 S. 816; 6 W. & S. 31.

(*d*) *Macdonald* v. *Farquharson*, *supra*. *Scot* v. *Lindsay*, 1635, M. 12771.

(*e*) *Earl of Aboyne* v. *Farquharson*, 16 Nov. 1814, F. C.—Lord Bannatyne's Opinion.

(*f*) *Montgomery* v. *Watson*, 28 Feb. 1861, 23 D. 635.

depend upon the circumstance that he alone has a right of access to the banks, but the right is in his person substantively, as a pertinent of the lands. A mere right of way along the bank of a river or a loch, by which the public have free access to the water, does not confer upon them the right of fishing for trout in a private stream (*c*). Neither will prescriptive possession of trout fishing, in such circumstances, confer a right (*d*). A tenant holding the adjacent land on an agricultural lease, is not entitled to fish for trout by nets without special permission; and if he do so, he is liable in penalties under the Act 8 & 9 Vict. c. 26 (*e*). It has recently been decided, that at common law an agricultural tenant, unless excluded by the terms of his lease, is entitled to fish for trout in a pond upon his farm (*f*).

A right of trout fishing, besides being granted along with certain lands, or held as a pertinent thereof, may be reserved from the grant, and transferred to a third party (*g*); but it is not clear that a right of trout fishing can be constituted a separate feudal estate unconnected with some corporeal

(*c*) *Fergusson* v. *Shirreff*, 18 July 1844, 6 D. 1363; *Montgomery* v. *Watson*, 28 Feb. 1861, 23 D. 635. In the case of *Carmichael* v. *Colquhoun*, 1787, as reported at M. 9645, and at F. C., vol. x. p. 10, an unanimous dictum is ascribed to the Court, 'that any person standing on a high road or other public ground contiguous to the stream might lawfully catch them.' On examining the more correct report of Hailes (2. 1033), where the opinions of all the judges are given, there appears to be no ground for ascribing this dictum to the Court. The point was not before the judges, and they express no opinion on it. An exactly opposite doctrine, as stated in the text, has been laid down in the case of *Fergusson* v. *Shirreff*; and the report of *Carmichael's* case is repudiated as erroneous. It has unfortunately been adopted as correct by more than one writer.

Another explanation of the dictum which is thus ascribed to the Court is, that it was meant to apply to *public* rivers; and in that case the doctrine is correct, for in public rivers *access* is all that is required to enable the public to exercise their right.

(*d*) *Fergusson* v. *Shirreff*, *supra*. Prof. Bell (Prin. 747) hazards a contrary opinion.

(*e*) *Duke of Richmond* v. *Dempster*, 4 Irvine, 10. *Infra*, p. 263.

(*f*) *Maxwell* v. *Copland*, 28 Feb. 1868. This decision stands as yet on the sole authority of the Lord Ordinary, and while unconfirmed by the Inner House, appears to be of very doubtful authority.

(*g*) *Carmichael* v. *Colquhoun*, 1787, M. 9645.

heritable subject. If a loch is the subject of an express grant, separately and distinctly, in the titles of the proprietor of the land, it might be an open question whether the loch could be conveyed to a third party without conveying any lands along with it; and even if it were found that such a subject were capable of conveyance, it would by no means be the same thing as to say that the abstract right to fish for trout in the loch could be validly conveyed apart from the concrete subject of the loch itself. And in the case of a river, it appears still less likely that the right of trout fishing could be validly conveyed as a separate estate, for here the concrete subject in which the right could be exercised, the running stream, differs from a loch in its nature, and is incapable of being the subject of private property (*h*).

It is doubtful if a grant of a privilege to angle for trout in certain waters would be a sufficient conveyance of the right to the trout fishing generally. Angling is only one way of exercising the right of trout fishing, and the conveyance of a right to use a property in a certain way cannot be considered as equivalent to a conveyance of the property itself.

In private rivers and lochs the right of trout fishing belongs to the proprietor of the adjacent lands, and when exercised by the public even for longer than the prescriptive period, must be ascribed to tolerance merely; but in public rivers and in the sea, the right is open to all; but it can only be exercised where there is a right of access to the banks (*i*), or from a boat on the surface of the water (*k*). The shore of the sea is open to all the lieges, for purposes of which fishing is certainly one;

(*h*) See opinion of Lord Robertson, in *Menzies* v. *Macdonald*, 10 Mar. 1854, 16 D. 827. *Patrick* v. *Napier*, 28 Mar. 1867, 5 Macph. 683.

(*i*) See note (*c*), preceding page.

(*k*) The distinction between public and private rivers has been discussed *supra*, p. 27. In one view of the question, the public right to fish for trout is co-extensive with the capabilities of the stream for boating; the test of capability for navigation being taken as the test of the public or private character of the right of fishing. An opinion is expressed, however, that the public right of fishing for white fish in rivers extends only so far as the tide ascends.

the banks of public rivers may be made use of for certain necessary purposes connected with navigation, but it does not appear that the public has any right to the use of them for the purposes of trout fishing. A boat may be used when the river is sufficiently navigable to admit of it; but it does not necessarily follow that where a boat can be used, the right of fishing is public.

A grant of salmon fishing from the crown includes the lesser right of trout fishing; and this rule holds, even though the salmon fishing is granted to one who is not the proprietor of the adjacent lands. Prof. Bell states the rule erroneously: 'Salmon fishing granted by the crown to a 'stranger gives him, by access, a right also to fish trout; but 'not in close time, when he has no privilege of access.' It is an error to suppose that it is by reason of his right of access to the water that the grantee of the salmon fishings possesses a right to fish for trout. The opinion at least holds good only in the case of a public river, for there the simple right of access, which, of course, is possessed by the grantee of the salmon fishing, is sufficient to confer a right to fish for trout; but in a private river the case is different, for here, the trout fishing is a pertinent of the lands, and access to the banks (as was found in the case of *Fergusson* v. *Shirreff*) (*l*) is not sufficient to confer a right to fish for trout. It is true that a grant of salmon fishing to one not the proprietor of the banks, confers a right also to the trout fishing; but this is by implication, and on the principle that the greater includes the less. Mr Bell's misconception, however, of the *rationale* of trout fishing in private rivers being included in the right of salmon fishing, has led him into no greater error in his statement of the law than supposing that the right of trout fishing held on such a title can be practised only contemporaneously with the salmon fishing,

(*l*) 18 July 1844, 6 D. 1363.

and that it ceases with the commencement of the salmon close time, the salmon fisher having no longer a right to the water—the fact being that his right of trout fishing, depending not upon his right of access to the water, but on the possession by him of the superior right of salmon fishing, can be exercised by him during the whole of the legal trout fishing season. An argument, but it is thought a feeble one, might perhaps be advanced in favour of limiting the right of trout fishing to the period during which the superior right of salmon fishing, in which it is included, can alone be legally exercised.

The right of trout fishing which is possessed by the grantee of the salmon fishing is by no means exclusive of the right of trout fishing possessed by the proprietor of the adjacent land, even though the latter has abstained from exercising it for the prescriptive period. The right being *res meræ facultatis* in the person of the proprietor of the adjacent land, the only means of permanently debarring him, or those acting in his right, from the use of it, would be actual exclusion continued for the prescriptive period, and acquiesced in during the whole of that time by the riparian proprietor.

Where rights of salmon fishing and trout fishing are possessed by different persons in the same locality, the right of trout fishing must be exercised so as not to injure or interfere with the superior right (*m*). If the proprietor of the trout fishing exercises his right in an illegal manner, or makes a pretence of fishing for trout for the purpose of disturbing the salmon, interdict may be obtained against him; but a reciprocal obligation exists on the proprietor of the superior right, that it be not used emulously (*n*). Questions of some

(*m*) *Carmichael* v. *Colquhoun*, 1787, 2 Hailes, 1033; *Mackenzie* v. *Rose*, 26 May 1830, 8 S. 816; 6 W. and S. 31; *Sommerville* v. *Smith*, 22 Dec. 1859, 22 D. 279. In this last case, the question was suggested, Is the party possessing the right of trout fishing entitled to fish with trout tackle in the salmon casts? The Lord President appeared to think that he could not be prevented from doing so, but the Court expressed no opinion.

(*n*) *Forbes* v. *Earl of Kintore*, 31 May 1826, 4 S. 650 (656). In this case, which raised the question of the right of a proprietor of cruive fishing to grant licences

nicety may arise as to the extent to which either party is entitled to use his right without undue prejudice to the other; but any conflict between the fair rights of the rival proprietors forms a proper question for the determination of a jury (*o*).

The proprietor of the salmon fishing is not entitled to interdict the proprietor of the adjacent land from exercising his right of trout fishing even in the same area of water as the right of salmon fishing, so long as he is unable to allege that the right of trout fishing is exercised in an illegal manner, or in such a way as to injure the superior right. Still less is he entitled, in the absence of such allegations, to interdict the proprietor of the opposite bank from exercising his right of trout fishing (*p*). But whether the salmon fisher (his own right being confined to one bank) is entitled to interdict against a mere trespasser fishing on the opposite bank, is an open question. In the case referred to, the Court declined to decide whether a proprietor of salmon fishing on one bank is entitled to inquire if a trout fisher on the opposite bank has a special permission to fish—the owner of the opposite bank himself not complaining of trespass. Lord Ardmillan was of opinion that such an objection would be *jus tertii*, but in the subsequent case of *Stuart* v. *M'Barnet* (*q*), the opinions of the same judge and of Lord Deas were in favour of sustaining the right to object to a mere trespasser on the opposite bank, at least in a narrow river where a cast of the line from the opposite bank necessarily intruded on the area of the objector. The point seems never expressly to have been submitted for decision, but a case might arise in which it would assume

to fish with the rod on the bank of the proprietor of an estate not having a right of fishing, and to prevent that proprietor angling with the rod for trout on his own banks, the Court remitted the question to a jury to ascertain the state of possession.

(*o*) An appropriate form of issue will be found at p. 590 of *Macfarlane on Issues*.

(*p*) *Somerville* v. *Smith*, 22 Dec. 1859, 22 D. 279.

(*q*) 20 March 1867, 5 Macph. 753. See p. 136 *supra*. *Montgomery* v. *Watson*, 28 Feb. 1861, 23 D. 635; this, however, was the case of a loch in which the interdictor had either the sole right of property, or at least a joint *pro indiviso* right in the whole lake and its *solum*.

importance. 'Bands of salmon poachers might frequent the 'spot under cover of fishing for trout, whose real object it 'might be difficult to detect, and yet the proprietor of the 'bank might not choose to interfere.' Supposing that a fisher upon the opposite bank might be required to produce evidence of permission to fish, it is not clear what would be held as constituting leave, whether it could be implied, or whether it would require to be expressly given, and whether it must be in writing.

It has not been expressly decided whether the right of angling for trout is capable of being made the subject of servitude to a contiguous property. In the case of *Patrick* v. *Napier* (*r*), it was held that it could not be attached as a prædial servitude to lands which were not adjacent to the stream, so as to be carried as a part and pertinent thereof; but it remains an open question, whether it might not be created a servitude to contiguous lands. Professor Bell states that the only servitudes know to our law are prædial; and among these a right of trout fishing has never been recognized. It is true that Lord Stair has said, that there may be as many servitudes as there are modes of using property, but as Lord Justice-Clerk Hope has remarked, this dictum has been used in every case where a servitude has been attempted to be established, and if carried to its logical results, would lead to consequences utterly unlooked for. The principle has, in fact, been limited in practice. There are many burdens or privileges or uses of property which may be made the subject of personal contract, but which the law does not recognize as regular servitudes; and there are several cases in which rights of different descriptions have been refused to be sustained as servitudes, on the ground of their not being known and recognised as such in the law of Scotland (*s*). Undoubt-

(*r*) 28 Mar. 1867, 5 Macph. 683.

(*s*) *Cochran*, 1759, M. 14518; *Cleghorn*, 1813, 2 Dow, 40; *Falkland*, 1708, M. 10916; *Jaffrey*, 1775, M. 14517; *Sinclair*, 1779, M. 14519; Bell's Prin. 979.

edly a privilege might be acquired, and a personal right established by agreement, by which the proprietor of one tenement might obtain a right to fish for trout in the property of another; and such a privilege might be constituted in such a manner as to be perfectly binding upon both the parties to it, but it is doubtful if such a burden could be considered as of such a well established and defined character as to be transmissible to singular successors (*t*). In the case of *Aboyne* v. *Farquharson* (*u*), it was decided that a right of hunting and fowling cannot be made the subject of a prædial servitude, and cannot be entitled to the legal character thereof. A right of trout fishing, it is true, though somewhat vague and indefinite in its character, is perhaps, by its nature, more capable of being the subject of a servitude than a right of hunting and fowling. The area over which the right can be exercised is more distinct in its limits, and the exercise of the right does not require for its enjoyment the same indefinite and varied privileges as are inseparably connected with the right of hunting. If a right of trout fishing over the property of another can be regarded as a proper prædial servitude, there must, at least, always be a dominant tenement. Besides the point of transmissibility to singular successors, the question whether the right to trout fishing existing in one

(*t*) To be effectual against singular successors, it would at least be essential that the dominant tenement should be adjacent to the servient. Otherwise the injustice to singular successors might be great; and a person might purchase a property over which various burdens existed unknown to him. The right of trout fishing is a right the possession of which leaves no outward and visible sign; and if it was capable of being separated from the property in the lands, and existing in a third party, without the transference appearing upon the title deeds, the interests of a singular successor might be very grievously affected. A proprietor, for example, on the banks of Loch Tay, might feu out portions of a separate property belonging to him in the neighbourhood of Edinburgh, and as a pertinent of each feu a servitude of fishing in Loch Tay might be given. It can scarcely be maintained that such a serious limitation of the rights of property would be considered good against a singular successor in the lands of Loch Tay, without such a burden appearing on the face of his titles. *Tailors of Aberdeen* v. *Coutts*, 1837, 2 Sh. and M'L. 663; Ersk. 2. 9. 33.

(*u*) 16 November 1814, F. C.

who is not the proprietor, is a servitude or merely a personal privilege, imports this practical distinction,—if it is a servitude, it can only be acquired by one who is the proprietor of the dominant tenement; while, if it is merely a personal right, it can be delegated to any person, unless there be an express provision to the contrary. The servitude could not be acquired by the public, or by one unconnected with the lands (*x*); nor is it communicable by the proprietor of the dominant tenement to a third party who has no title to the dominant tenement (*y*).

The servitude of trout fishing (if there can be such a servitude) is of such a nature that the extent of the possession enjoyed would probably be considered, not as the measure but as the badge, of the right acquired. The rule *tantum prescriptum quantum possessum* would probably not apply; and the use necessary to constitute the servitude of fishing over the whole portion of water appertaining to the servient tenement, would probably not require to be proved fishing over every portion of the stream or loch.

Trout fishing in Lochs.—The right of fishing for trout in a loch passes as a pertinent of the adjacent lands in the same manner as in private streams; but certain lochs, from their size and situation, form great channels of communication for the traffic of a county or district, and must therefore be considered as *res publicæ* in the same manner as navigable rivers (*z*). In lochs of this description, the right of fishing may perhaps be considered to be, or may be established by usage to be, public. Lochs of smaller size are sometimes specially conveyed in the titles of a proprietor, and the right of using them for the purpose of fishing in them is of course

(*x*) *Fergusson* v. *Shirreff*, 18 July 1844, 6 D. 1370.
(*y*) *Murray*, 8 December 1808, F. C.
(*z*) Bell's Prin. § 648; Stair, 2. 3. 73; *M'Donell* v. *Cal. Canal Comrs.*, 5 June 1830, 8 S. 881.

implied therein (*a*). In other cases the expression '*cum lacu-* '*bus*' is used; and 'pertinents' will, as Lord Stair says, carry lochs within the lands conveyed, as much as the mention generally of lochs. At any rate, the right to trout fishing in the lochs enclosed by, or adjacent to, the lands passes as a pertinent, though there be no special conveyance of the lochs or of the trout fishing therein (*b*). In the case of a river, the right to fish therein for trout may pass either in virtue of a special mention of it in the titles of the proprietor, or simply as a pertinent of the lands; but the right to fish for trout in a river can never rest on the special conveyance of the river, as it may do in the case of a loch, for though the *solum* of a private river may be the absolute property of the adjacent land holder, and though he may possess certain rights over the running water, the stream itself is not capable of being made the subject of conveyance or private property.

Where the lands lying round a loch are held by more than one proprietor, each has a right of trout fishing therein, unless there has been prescription by one of them of excluding the others for forty years, following upon a general title (*c*). Difficult questions may arise as to the extent of fishing in a loch that separate parties may have, who have property on the banks—whether they are entitled to fish only *ex adverso* of their own property, in an area limited by lines drawn from the extremities of their lands to the centre of the loch,—or whether they have a right in common with the other proprietors to fish over the whole extent of the loch. In one case (*d*), the House of Lords, reversing the judgment of the Court of Session, found that 'the right of property in the '*solum* of each of two proprietors extended *ex adverso* of his 'lands from the shore to the middle of the loch, and that

(*a*) *Dick* v. *Earl of Abercorn*, 1769, M. 12813.
(*b*) *Macdonald* v. *Farquharson*, 14 Dec. 1836, 15 S. 259.
(*c*) *Scot* v. *Lindsay*, 1635, M. 12771.
(*d*) *Cochran* v. *Minto*, 1815, 6 Paton 139.

'each might dig marle within his own division.' This decision, however, only decided the extent of property that each had in the *solum* of the loch, and by no means decided the limits over which their rights of fishing were to extend. A person whose property extended for a certain distance along the shore of a loch, would certainly have right of access to the whole surface of the water for boating purposes, and it would appear to be almost impossible in practice, especially where the loch was irregular in shape, to adjust exactly the rights of the adjacent proprietors, and to assign distinctly to each a separate portion of the water of which alone he was to have the right of fishing, on the principle that each proprietor's right existed only in that portion of the water which was *ex adverso* his own lands.

Another question seems to be, whether a person who has a right of fishing in a loch as a pertinent of adjacent lands, may communicate it to any unlimited number of persons, and so multiply indefinitely the number of proprietors (*e*). He may sell the property and split it up into any number of separate integral estates, or he may feu it in small portions for building purposes, retaining only a small portion for himself; can he convey, as an adjunct of each portion of the estate conveyed, the right of trout fishing; and can he thus, whose property perhaps in its original and entire form, extended along a very small portion of the shores of the loch, bring into existence a large number of proprietors, whose rights, in respect to the fishing, are equal to those of the largest proprietor, and who, by their number, may render almost valueless the rights hitherto enjoyed by them? 'If 'this principle is correct, it would be to recognise a case in 'which, while the conveyance dispones a great and valuable

(*e*) 'The power to multiply the common proprietors implies a power to do so *ad* '*libitum*. No one could pretend to fix a limit of that kind to the exercise of a 'legal right.' Per Lord Deas, *Menzies* v. *Macdonald*, 10 Mar. 1854, 16 D. and S. 55.

'heritable right, yet in the granter the very same right will 'remain wholly unimpaired and undiminished in extent or 'exercise, and several proprietors will then exercise to the full 'extent of this universal right, a right of common property' which was formerly limited to perhaps two. The original proprietor, in this view, can dispone his right to another and yet remain undivested of it; or, to use a homely illustration, he can both eat his cake and have it. It has been decided in the case of *Menzies* v. *Macdonald* (*f*), that a party whose property extended along one side of a loch eleven miles in length, and who had himself undoubtedly a joint right of property along with the opposite proprietor in the loch, could validly convey to a third party purchasing a part of his property, a similar right in the loch to that which he himself possessed. It was strenuously argued, on the other hand, that the joint property in the loch was a *pro indiviso* right in an indivisable subject, and one which could not be conveyed, or any part of it, to a third party, to be enjoyed in common with the original joint proprietor. It was strongly urged, also, that the right which was thus conveyed to a third party must, at least, be limited to that part of the loch lying *ex adverso* of the lands conveyed. Several questions were discussed, involving wider interests than the mere right to the fishing, but so far as the present subject was affected by the judgment, it was decided that the conveyance of a portion of an estate which possessed rights over the whole of the loch, carried with it similar and co-extensive rights, and that the right to the use of the loch was not limited to the portion *ex adverso* of the lands so conveyed.

It will be observed that a very important distinction exists (and the distinction was dwelt upon forcibly by the Lord Justice-Clerk in the case above referred to) between the two different kinds of right to a loch which may exist in a proprietor of adjacent lands. A proprietor may possess a right

(*f*) 10 Mar. 1854, 16 D. 827; 2 Macq. 463.

of feudal property in a loch, created by grant and followed by possession; and a right of private property in the loch, solely, or, it may be, jointly with other proprietors, is thus created in the person possessing such a title. On the other hand, a proprietor of adjacent lands may have a right to a certain use of the water in respect of the possession of the lands along its shores. This use of the water is for the purposes of his lands, and a very liberal interpretation would, no doubt, be permitted; yet, where there is an express grant followed by possession, though the loch may be subject to certain uses for the lands adjoining the loch is still the private property of the party holding such a title, and his right in it is of a higher order and different character to the possessor of the inferior rights alluded to. It is unnecessary to inquire further into the effects of such a distinction, or the extent of use which would be permitted to attach to each description of right, because it is clear that the even inferior right would carry with it the right of fishing, with which alone we are concerned, and that a party whose lands are adjacent to the loch, though his titles give him no right of property in the lake itself, would be entitled, if not excluded by a habile title, to fish for trout in that portion at least which was adjacent to his lands. The law takes little account of what it calls mean fishing, which belongs, as Lord Cockburn has remarked, as a mere pastime to those entitled to use the water. Whether such contiguity alone would give him a right to fish for trout over the whole extent of the loch, is, of course, a different question, and remains untouched by the decision in *Menzies* v. *Macdonald*. It would, of course, be a strong thing to give to a party whose lands extended for perhaps not more than 100 yards along the shore of a loch, and whose titles gave him no express right whatever in the loch itself, an equal right to the fishing over the whole extent of the loch, with proprietors whose lands almost encircled the loch, and whose rights in the loch itself was expressly elevated

by their titles into rights of private property. This point seems never to have been expressly raised or decided, but the decision in *Menzies* v. *Macdonald* goes far to countenance, if not to establish, such a doctrine; for it was there considered impossible to limit the rights over a loch to any definite portion of its extent; and if the principle be acknowledged, as it seems to have been in that case, that rights which appertain to a portion of a loch must be held to extend over the whole of its area, then it follows that a person whose property is bordered by a loch, to ever so small an extent, so long as it be not wholly illusory, is entitled to exercise the right of trout fishing over the whole of its area, without any limit whatever, except that the right be not carried on *in æmulationem vicini*, and that the shores of the other proprietors be not used for drawing nets. And this principle, if carried to its logical result, would not only warrant the proprietors of any strip of adjacent land in fishing over the whole extent of the lake, but would entitle him to delegate his right to one, or to any number of persons, without making a disposition of a single inch of his estate. He might build a hotel upon his lands, and might let for hire to his visitors the right of angling in the loch (*g*). A safeguard, however, against practices of this kind, when carried to an excessive degree, would exist in an application to the Court, who would undoubtedly interfere to protect the interests of the other proprietors from being prejudiced by the undue or immoderate exercise of the privilege by one of their number. In the case of *Menzies* v. *Macdonald*, above referred to, the Court refrained from interfering between the proprietors, solely on the ground that no circumstances had been alleged to enable the Court

(*g*) It seems more doubtful if a joint proprietor in a loch, whose right of joint property stood on the footing referred to, would be entitled to grant a lease, for profit, of his privilege of fishing. In the case of *Campbell* v. *Campbell*, 24th January 1809, F. C., a co-proprietor of commonty was found not to be entitled to let for hire to a third party the right of shooting over the common, though he might exercise the privilege himself, and perhaps even grant permission to his friends gratuitously to do so.

to exercise its power of regulating the possession *inter se* of the joint proprietors.

In short, the rights of proprietors whose lands adjoin a loch, appear to be very similar in their nature to rights of commonty. They are, however, in one view, more extensive, for on the authority of *Menzies* v. *Macdonald*, it appears that a joint proprietor conveying to a third party a portion only of his lands, communicates to him a right over the loch co-extensive with those possessed by himself and the other co-proprietors; whereas the proprietor of an estate to which rights of commonty are attached, in conveying a portion of his estate to a third party, can only convey to him a right over the common proportionate to the portion of the estate disponed—*e. g.*, he could only convey to the disponee a right to pasture as many cattle on the common as the land conveyed could winter. If a portion of a common is sold, the extent to which the disponee can exercise the rights of commonty, diminishes *pro tanto* the extent to which the granter can exercise those rights.

A public right of trout fishing in a loch cannot be established merely by proof of usage for the prescriptive period; at least, where a title to the loch and the fishings therein is held by one of the adjacent proprietors. Where several persons have a right of trout fishing in a loch, it is not quite established whether one of the joint proprietors, without the concurrence of the others, is entitled to interdict a stranger from fishing in a part of the loch not *ex adverso* his lands, the proprietor whose lands are not *ex adverso* that portion not objecting. In the case of *Montgomery* v. *Watson* (*h*), one of several joint proprietors was found to have such a right, but the pure question did not arise there, for the objecting proprietor had an express title to the loch and to the fishings therein. A similar question was discussed (but not decided)

(*h*) 28 Feb. 1861, 23 D. 635.

in the case of *Somerville* v. *Smith* (*i*), where the proprietor of one bank of a river sought to interdict a trespasser on the opposite bank. A distinction, however, exists between the case of a river and a loch, for, in the former, the proprietor of one bank has no right of property, and no rights whatever in the *alveus* of the stream beyond the *medium filum;* while, in the case of a loch, the proprietor of lands adjacent to it has at least a joint *pro indiviso* right in the whole lake and its *solum*, except where it is held on an exclusive title by one of them. At the same time, the proprietor of one bank of a narrow stream has a greater practical interest to object to a trespasser upon the opposite bank, for his line and hook necessarily invades the area of water belonging to the objector.

Eels.—A right to eel cruives in a river may be acquired by possession under an infeftment in adjacent lands, with part and pertinent (*k*); and it is unquestionable that the right to fish for eels, if not by such an obstructive method as cruives, at least in the ordinary manner, belongs, in the same way as a right to fish for trout, as a simple pertinent to the proprietor of the adjacent lands, without the necessity for proof of possession to establish his right.

Trout Poaching.—A special Act for the preservation of trout and other fresh water fish (8 & 9 Vict. c. 26, 1845) prohibits all persons, except the proprietors of the adjacent lands, or others having a right to fish, or holding a written permission from those who have a right to fish, from fishing for trout or other fresh water fish with any net of any kind or description, under a penalty of £5 for each offence. By a subsequent Act (23 & 24 Vict. c. 45, 1860), the same provisions are extended to poaching for trout by certain means other than net, namely, double rod fishing, cross line fishing,

(*i*) 22 D. 279.
(*k*) *Braid* v. *Douglas*, 1800, M. *voce* Property, Appx. No. 2.

fishing by set lines or otters, burning the water, pointing, striking the fish with any instrument, or putting into the water lime or any other substance destructive to trout or other fresh water fish. An attempt to take trout, etc., by any of the methods named is dealt with in the same way as if the offence was completed; and in either case the boat or net used is forfeited, and the expenses of the conviction are leviable (*l*). Trespassing upon lands with the intent to commit the offence is punishable by a penalty of £5; and by it is explained that the possession of any net calculated for the purpose is to be considered evidence of the intent. By § 4 of the earlier Act, which relates to net fishing alone, any person whatever is authorised to apprehend an offender, *brevi manu*, and bring him before the sheriff or justices, or to a constable; but by the later Act, which relates to other methods besides net fishing, no such power of arresting without a warrant is given. Under both Acts the committal may be made out by the sheriff or justices. By the later Act (§ 3) the proprietor of the land or persons having his authority may seize and detain implements used in the illegal fishing, and fish that have been caught. The complaint is to be disposed of by summary procedure; in offences under the earlier Act, jurisdiction being confined to the sheriff, but as regards offences under the later Act, the Justice of the Peace also forms a competent tribunal. Justices of the Peace are not disqualified from acting, by having a right of fishing in the stream or loch where the offence has been committed, except in cases where they are a party to the prosecution or are directly interested in the result. Under both Acts, an appeal lies to the Circuit Court of Justiciary. The penalties

(*l*) 8 & 9 Vict. c. 26, §§ 1, 2, and 3; 23 & 24 Vict. c. 45, §§ 1, 2, and 3. It has been decided that a tenant of the adjacent land has not a right to fish for trout by nets without permission, and that if he does so he is liable to the penalties under the Act. *Duke of Richmond* v. *Dempster*, 14 Jan. 1861, 4 Irvine, 10. The question whether or not an agricultural tenant has a right to *angle* for trout *ex adverso* the lands leased to him, was not decided in that case. *Vide* also p. 248, note (*f*), and case of *Maxwell* v. *Copland* there cited.

imposed are to be applied, one-half for behoof of the poor of the parish where the offence is committed, the other half going to the prosecutor. Proceedings under the earlier Act are limited to six months, and under the later Act to three months, after the commission of the offence (*m*).

Fishing by single rod and line is not affected by the earlier, and is expressly excepted from the later Act; the law with regard thereto, being left to be regulated by the rules of the common law. As regards a mere stranger fishing by rod and line in a private stream or loch, the law of trespass is sufficient to prevent the encroachments which he commits by entering the lands and by casting his hook into the stream (*n*); and as regards a person who has a right of way along the banks, or who holds an agricultural lease of the adjacent lands, the law may be considered to have been fixed against the intruder by the case of *Fergusson* v. *Shirreff* (*o*) which decided that a mere right of access to the water does not confer a right to fish.

The provisions of the later Act (23 & 24 Vict. c. 45) which prohibit the destruction of trout by such means as liming the water or putting into it any material which is injurious to the fish, does not extend, any more than the other prohibitions of the Act, to persons who have rights of trout fishing in the stream or loch; but operations of this nature, when carried to an improper extent, even by those who have a right of fishing, can be put a stop to at common law by process of interdict, and damages for injury sustained can be recovered, at the instance of other proprietors of fishing, as infringements upon the common right to the produce of the waters.

(*m*) For details of procedure under Summary Procedure Act, see Chapter X.

(*n*) It will be seen (*infra*, chapter XVII.) that the law on this point differs in regard to the rivers flowing into the Solway. In 1863 a bill was introduced to assimilate the law in all parts of Scotland, but it did not become law.

(*o*) 18 July 1844, 6 D. 1363.

CHAPTER XVI.

THE TWEED.

THE fisheries of the river Tweed, though subject in general to the General Acts of England Scotland (*a*), have been, in almost every instance, specially exempted from their operation; and the whole course of the river and its tributaries, in those parts where it forms the boundary between England and Scotland, as well as in those parts where it is wholly within either country, has been placed under special legislation.

That the ancient Scottish Acts extended, in all cases, unless there was a special exception in their favour, to the Tweed and to the Solway, or at least to those parts of their waters which were within the kingdom of Scotland, may be assumed, and has indeed the authority of judicial decision. The House of Lords, in the case of *The Duke of Roxburghe* v. *The Earls of Home and Tankerville* (*b*), reversing the judgment of the Court of Session, decided that the Scotch Act of 1696, c. 33, against illegal modes of fishing, applied, in the absence of any exemption, to the Scotch portions of the Tweed; and the same doctrine, undoubtedly holds good with regard to all the ancient statutes which contain no express declaration to the contrary (*c*). Some of the ancient Scotch

(*a*) 22 & 13 Vict. c. 70, § 23.

(*b*) June 1774, 2 Paton, 358; Court of Session, June 1768, M. 14272; and 1 Hailes, 249.

(*c*) It has sometimes been maintained that the ancient Scotch Acts did not affect the Tweed; but as the same argument would apply to the English Acts, the

Acts, however, expressly exempted the river Tweed and its tributaries, as well as the western border rivers, from their operation. The Act of James I., 1429, c. 22 (or 131) (*d*), referring to the previous statutes, 1424, c. 10 and c. 35, which were two of the very earliest Acts imposing restrictions on the salmon fishing in Scotland, declared that these restrictions had effect 'outetakande the watteris of Sulway and Twedye 'quilkis salbe reddie to al Scottis menis al tymis of the yer 'als lang as Berwyk and Roxburghe are in Englismennis 'hands.' A similar exception, or at least an exception obviously for the same reason (whether from aggressive motives, or out of deference from King James to Queen Elizabeth), of 'the water of Tweede' was made in the Act, 1567, c. 30, and of 'the waters of Annand and Tweid,' in the Act, 1597, c. 265, and also in the Act, 1600, c. 11, which contained an exemption of 'the rivers of Annand and Tweed.' The reason for this exemption is obvious, and is explained in the Act of James I., 1606, c. 5. 'The rivers of Tweed and 'Annand were then exempted, because the said rivers at that 'time devyded at many parts the bounds of Scotland and 'England adjacent to them, whereby the forbearance upon 'the Scots part of the slauchter of salmond, in forbidden 'time and of kipper smolts and black fishe, at all times, would 'not have made salmond any mair to abound in these waters, 'if the like order had not been then observed upon the English 'side.' To ordain restrictions upon one side of the river or firth which could not have been enforced upon the other side, would have been to place Scottish subjects at a serious disadvantage with their English neighbours, without ma-

consequence of such a proposition would be that the Tweed, in the absence of special legislation, was subject to no law whatsoever. It is true that controverted rights between the subjects of the two kingdoms with regard to the Tweed fisheries were sometimes decided by the warden of the marches, but the practise was frequent in disputes of every description, and it by no means leads to the conclusion that the Tweed was altogether exempt from statutory regulations.

(*d*) The chapters of the old Scots Acts of Parliament are throughout numbered differently in different editions.

terially affecting the destruction of the salmon; and, as regards the Tweed, if all the lower part of the river (where one side is within England) 'both as to close time, stake or 'fixed nets, cairns, and so forth, could not be subjected to 'Scotch law, it would only have been restricting the use of 'the upper part of the river prejudicially to the Scotch pro-'prietors and for the benefit of the lower, to have extended 'the Scotch statutes to the Tweed' (*e*).

After the union of the two kingdoms in the person of James VI., the exemption was, in one instance at least, withdrawn, and the Scotch Act of 1600 c. 11 (which punished the taking of fish in close time, and foul fish and smolts at all times, as theft) was, by the statute 1606, c. 5, declared, in the new circumstances of the sovereignty, to extend to the Tweed and Annan also. This repeal of the exemption, however, extended only to the immediately preceding statute, the prohibitions of which were thus made applicable to the Tweed and Annan as well as to the rest of Scotland. The exemption of the 'water of Tweede' in the Act of 1567, c. 30, and the exemption of 'the waters of Annand and Tweid' in the Act 1597, c. 265, were not repealed, and it must therefore be assumed that the prohibitory enactments of those statutes still remained inoperative on those waters. Neither was the exemption of 'watteris of Sulway and Twedye' in the Act of 1429, c. 22 (or 131) repealed, and it must therefore be assumed that the prohibitions enacted thereby continued to have no operation on those waters. The sum of the matter, therefore, with regard to the Tweed, appears to be, that the whole of the ancient Scottish Acts, excepting only the Acts 1429 c. 22 or 131, 1567 c. 30, and 1597 c. 265, applied at

(*e*) Lord J. C. in *D. of Roxburghe* v. *Ramsay*, 9 Feb. 1848, 10 D. 661; *Milne* v. *Smith*, 23 Nov. 1850, 13 D. 112. The migratory habits of the salmon also form an amply sufficient reason for subjecting the whole course of a river, from its source to the sea, to a single jurisdiction; and the inconvenience of placing one portion of it under the operation of a different set of regulations to the remainder would, in practice, be found to be intolerable.

least to the Scotch parts of the Tweed and its tributaries, as well as to the rest of the Scottish dominions. It may possibly have been the intention of King James VI. (*f*), who is known to have entertained a favourite scheme of a legislative union between the two countries, on succeeding to the throne of England, to place the whole of the Tweed and Solway, or at least the Scotch parts of those waters, under the same laws in all respects as the rest of Scotland; but it seems impossible to construe his enactment of 1606 in any wider sense than as referring only to the statute immediately preceding. But though the application of the old Scotch Acts to the river Tweed appears to be as here stated, it is unnecessary to inquire more particularly into the details of these statutes and their application, inasmuch as, not only are the enactments inoperative at the present time, but the question of the application of the Scotch fishery laws of the present day, to the Tweed, cannot now be in dispute. The whole management of the fisheries in that river and its tributaries is now regulated by special statutes; and the operation of the general Scotch Acts has been excluded, with the exception of certain specified sections, which apply equally to the Tweed and to the rest of the country (*g*). They are placed under special legislation, and exempted from the general Acts of either kingdom, for the same reason which operated in ancient times—the inconvenience of imposing restrictions on one part of a river which could not be enforced on another part, as well as the necessity for a uniform system of management on both sides of the river, from its source to its mouth.

(*f*) King James himself took great personal interest in the improvement of the fisheries of the kingdom. The phrascology of the science pervaded his ordinary language. In intimating an intended visit to his Scottish dominions, after he had been for some years settled on the throne of England, he expresses his 'salmon-like' longing to return to his native country.

(*g*) § 23 of the Tweed Act of 1859 declares that that river is not to be held as exempted from the provisions of future general Acts; and in subsequent general Scotch Acts, the practice has been specially to exclude the Tweed from their operation, with the exception of any particular provisions which may be meant to apply thereto.

For a large portion of its course, the 'river Tweed' is, in common parlance, said to be the boundary between England and Scotland, but the actual line of division is the *medium filum* of the stream. If the whole river were to be held the legal boundary between the two kingdoms, it would be impossible to say whether the stream itself was in one kingdom or the other, or when the statutes of the one kingdom were to apply, or when they were excluded (*h*). The territory and rights of each meet in the centre of the stream.

But though the management of the fisheries, on the Tweed and its tributaries, and the *exercise* of the right to fish therein, are exempted from the general statutes which affect the rest of Scotland, the law relating to title—to the *constitution* of the right to fish—is, of course, where the fisheries are situated within Scotland, the same as that which prevails throughout the rest of Scotland; the right to fish in those parts of the river and its tributaries which are within England being regulated by the laws of that country. The exact line which divides one country from the other, at those parts where the river forms the boundary, is held to be the *medium filum* of the stream, dividing into two not only the *alveus* but the river itself (*i*); the right of fishing on the northern half being regulated by the law of Scotland, and that on the southern half by the law of England.

The commencement of the special legislation for regulating the fisheries in the Tweed and its tributaries did not take place till sometime after the union of the two king-

(*h*) *Duke of Roxburghe* v. *Earl of Home*, 2 Paton 358; *Milne* v. *Smith*, 23 Nov. 1850, 13 D. 112. Grotius (*De jure belli et pacis*, 2. 3. 18), fixes the *medium filum* of a boundary river as the exact limit of coterminous rights, though a different rule, he says, may take place by express covenant or immemorial use and possession.

(*i*) The Act 11 Geo IV. c. 54, though a repealed statute, may be referred to. §§ 25, 30, 31, 48–52, etc., assume a portion of the fishings to be within Scotland, and a portion within England; also the Act of 1606. Where the river Esk, or the river Liddal, forms the boundary of the two countries, the *medium filum aquæ* is also, in each case, the actual line of division, the law of each country in questions of title, applying to its own half.

doms, and the first Act appears to be one passed in the year 1771 (11 Geo. III. c. 27). This statute, however, along with three passed subsequently in 1775, 1797, and 1807 (*k*), were repealed by an Act passed in 1830 (11 Geo. IV. and 1 Will. IV. c. 54), which latter Act itself, as well as a subsequent Act passed in 1836 (6 & 7 Will. IV. c. 65), was, in its turn, repealed by the Act of 1857. It is unnecessary to refer more particularly to these repealed Acts, or to their provisions. By their repeal, the system established by them was swept away, and the ground was cleared for the Acts of 1857 and 1859, which, along with one or two clauses of subordinate importance which have been imported from the general Scotch Acts, now constitute the code by which the fisheries of the Tweed and its tributaries are regulated. The Act of 1857 (20 & 21 Vict. c. 148) is not repealed by the Act of 1859 (22 & 23 Vict. c. 70), with the exception of certain of its sections, namely, the 41st, 42d, 43d, 44th, 46th, 47th, 67th, and 71st. With these omissions, the Acts are to be read together. The import of the combined statutes, subsequent legislative enactments, commissioners' bye-laws, and judicial decision, will be explained below.

The operation of the Acts extends to the river Tweed, and every river, brook, or stream which runs into it, whether in England or Scotland, or forming a boundary between the countries (*l*). It extends also to the mouth of the river Tweed, as defined by 22 & 23 Vict. c. 70, § 4, and extended by a bye-law of the Fishery Commissioners, dated 10th August 1863 (*m*).

(*k*) 15 Geo. III. c. 46; 37 Geo. III. c. 48; 47 Geo. III. c. 29. Under this last mentioned Act, a mode of fishing was found to be lawful which would not now be permitted; *Scott* v. *Kerse*, 11 Dec. 1812, F. C.

(*l*) 22 & 23 Vict. c. 70, § 2.

(*m*) The mouth of the Tweed was defined by 20 & 21 Vict. c. 148, § 41, which was repealed, and the limits redefined by 22 & 23 Vict. c. 70, § 4. The latter section enacted that 'the limits of the mouth or entrance of the river Tweed shall be deemed 'to extend, and shall extend, from the pier called Queen Elizabeth's Pier along the

The Board of Commissioners—their Powers and Duties.—The management of the fisheries is entrusted to a body of commissioners. Every one is a commissioner who is a proprietor of salmon fishings in the river of the annual value of £30, or which extend half a mile in length, where such fishings are only on one side of the river, or a quarter of a mile in length where such fishings comprehend both sides of the river. The husband of every proprietrix or liferentrix, one guardian of each minor, one trustee of every estate, one

'sea coast, on the south side of the said pier, to a point at high water mark, on the 'said sea coast, on the south side, distant seven miles measured in a straight line 'from the lighthouse on the said pier, and along the sea coast on the north side of 'the said pier, to the point of boundary at high water wark, between the borough 'of Berwick-on-Tweed and the kingdom of Scotland, and shall also extend five 'miles in front of the mouth of the said river, and of the whole line of sea coast 'within the points boundary hereinbefore mentioned into the sea,—such distance 'towards the sea to be computed by lines drawn at right angles to a line drawn 'between the said northern and southern extremities; and the said limits on the 'south shall be deemed to include, and shall include, the fishery now known as the 'Holy Island Station of the Goswick Fisheries.' By the general Scotch Act, 26 & 27 Vict. c. 50, § 4, the Scotch Salmon Fishery Commissioners were empowered to extend these limits northwards, from the limits here defined along the sea coast and into the sea, to such points, and to such extent, as they might fix. A bye-law was accordingly issued by them on 10th August 1863, determining 'That the limits 'of the mouth or entrance of the said river Tweed shall extend northwards, 'from the limits thereof, as defined in the said Tweed Fisheries' Amendment Act '1859, along the sea coast to the boundaries between the counties of Haddington 'and of Berwick, and shall also extend into the sea five miles in front of that por-'tion of the coast hereby added to the limits of the said river Tweed,—the dis-'tance to be measured at right angles with the coast. Given under our hands this '10th day of August 1863.

'WM. J. FENNELL,
'FRED. EDEN,
'JAMES LESLIE,
} *Commissioners.*

'Fishery Department, Home Office,
'Approved.
'Whitehall, 30th September 1863.
'G. GREY.

This bye-law look effect from 6th October 1863.

The Act 26 & 27 Vict. c. 50, § 4, further provides, 'That the rates or assessments 'to be levied on and in respect of the fisheries beyond the limits of the mouth of the 'river Tweed, as defined in the Tweed Fisheries' Amendment Act 1859, and within 'the limits as extended, under any such bye-law as aforesaid, shall not be applied 'in or towards the payment or discharge of any debts or obligations contracted by 'the commissioners acting under the Tweed Fisheries' Act 1857, previous to the 'passing of this Act.'

member or trustee of every corporation or company holding the requisite amount of salmon fishing, are also appointed commissioners, as well as one person nominated by each of the following bodies:—the Commissioners of Greenwich Hospital, the Dean and Chapter of Durham, and the Trustees under the will of Nathaniel Lord Crewe (*n*). One commissioner may name another of the body to be his representative, and to vote as his proxy at meetings of the commissioners, such authority being authenticated by writing (*o*). Commissioners may be represented by their chamberlain, factor, or attorney, whose authority must be in writing, and who is only entitled to vote or act for one commissioner at a time (*p*). One commissioner representing another can only vote or act at the one meeting specified in the proxy which he holds; but this rule does not apply to chamberlains, factors, or attorneys acting for their principals (*q*). A commissioner in his absence, and not having provided a proxy as above, may be represented by his eldest son or heir apparent without a written mandate (*r*). A person acting as commissioner without possessing the requisite qualification, is liable to a fine of £20 (*s*). A commissioner accepting a place of profit under the Act is disqualified, under a like penalty, from acting for himself as a commissioner, or as representing any other person (*t*).

A general meeting of commissioners is to be held on the first Monday of September in each year, at one or other of certain places specified in the Act; and no matters except the ordinary business of the commission is to be brought forward at such meetings, unless special notice has been given by advertisement, as directed by the Act (*u*). But a special meeting may be called on the requisition of three of the commissioners, by advertisement, under certain conditions, no matters being discussed by such special meeting,

(*n*) 20 & 21 Vict. c. 148, § 10.

(*o*) § 11. Proxies are chargeable with sixpence of stamp duty. 22 & 23 Vict. c. 70, § 21.

(*p*) § 12. (*q*) § 13. (*r*) § 14. (*s*) § 15. (*t*) § 16. (*u*) § 17.

except those that are specified in the requisition and advertisement. Five commissioners are to constitute a quorum, and if less than that number are present, the meeting may be adjourned, notice of the adjourned meeting being given in the same manner by advertisement (*x*). No adjourned or special meeting has power to rescind an act or resolution of an annual general meeting (*y*). Each meeting elects its own chairman, who, in addition to his vote as commissioner, has a casting vote (*z*).

At the annual general meeting districts may be appointed for the better conducting and managing the purposes of the Act, and the times and places of district meetings of commissioners may be fixed. The district meetings, at which three constitutes a quorum, may appoint a chairman, and clerks and officers at suitable salaries, and the clerk of each district is bound, under a penalty of £20, to give in, at each annual general meeting, a report from his district, with a copy of the books and minutes of proceedings (*a*).

Each commissioner is entitled to one or more votes, according to the amount of salmon fishings he possesses or represents. A fishery of the annual value of £30, or extending half a mile in length if on one side only, or a quarter of a mile if on both sides, is a qualification for one vote. A commissioner possessed of or representing salmon fishings of the annual value of £200 and under £400, or paying assessment on that amount, is entitled to two votes; and a commissioner possessed of or representing salmon fishings of the annual value of £400, or paying assessment on that amount, is entitled to three votes. No commissioner is entitled to more than three votes. Commissioners voting by proxy are entitled to the benefit of all their votes; but at district meetings they are only entitled to as many votes as they hold in respect of

(*x*) § 18. (*y*) § 19. (*z*) § 20. (*a*) § 21.

fishings situated within the district (*b*). Commissioners must defray their own expenses (*c*). They are to appoint at any general meeting a clerk, and treasurer, and superintendent of water bailiffs, and other officers, at suitable salaries, whom they may remove and replace as they think proper; and for this purpose a special general meeting may be called by the clerk, or by any three commissioners (*d*).

The duty of the clerk is to attend all meetings of the commissioners, to keep the books and accounts and minutes of all proceedings of the commissioners and committees appointed by them. The minutes signed by the chairman are to be held as evidence of their contents. The clerk is bound, under a penalty of £5, to furnish, at any time, to any commissioner who may require it, copies of any part of the books or accounts, on payment of sixpence for every hundred words so to be copied; and any commissioner is entitled at any time to inspect or peruse the books or accounts (*e*). The offices of clerk and of treasurer are not to be filled by the same person (*f*), and all the officers of the commissioners are prohibited from taking any fees other than those allowed (*g*). Officers intrusted with money are required to give security for the faithful execution of their duties (*h*); and collectors of rates are bound to account to the treasurer, and to the commissioners, for moneys received by them, as well as to give in to him a list of defaulters (*i*). A summary method is

(*b*) § 22. (*c*) § 23.

(*d*) § 24. The officers employed by the commissioners at the date of the passing of this Act were to be continued in office, and to be subject to the Act both as regards their past and future intromissions, § 9. There is a proposal to abolish the office of superintendent, and to place the protection of the river under the charge of the chief constables of the districts, or to appoint them to the office of superintendent under the Act. The Admiralty have been in the habit of granting the use of a gunboat for the protection of the fisheries at the mouth of the river. The police of the district have instructions to act in unison with the water bailiffs for the protection of the fisheries; and, without neglecting their duties to the public generally, they are bound to take cognizance of offences against the fishery Acts.

(*e*) § 25. (*f*) § 26. (*g*) § 27. (*h*) § 28. (*i*) §§ 29, 30.

provided for procedure and recovery under penalty of imprisonment against officers failing to account; or, if they refuse to make out accounts or deliver up documents, they may be committed to prison; or, if they are about to abscond, a warrant may be issued for their detention. Proceedings against officers are not to be considered as discharging their sureties (*k*).

The commissioners may sue or be sued in the name of their clerk, or of any three of their number nominated for that purpose (*l*). All rates, property, and other rights, which, previous to the passing of the Act, were vested in the former commissioners, were, by the Act, vested in the commissioners thereby appointed (*m*). Contracts and deeds executed before the passing of the Act were to remain in force, and the new commissioners were to be held liable for outstanding debts and obligations (*n*). Actions and other proceedings at law, to which the former commissioners were parties, were not to abate; and all proceedings under the Acts repealed were to be held as valid (*o*). Arrears of rates, which were due under the repealed system of management, were to be considered as due and payable to the new board of commissioners (*p*).

Close Time.—The close time on the river Tweed is now regulated by the Act of 1859 (22 & 23 Vict. c. 70, § 6). It is unlawful to fish with nets between the 14th of September and the 15th of February following, and the whole of this period applies also to fishing with the rod, if any other bait except the artificial fly is used. The close time for the rod and fly is shorter, and extends from the 30th of November to the 1st of February following (*q*).

(*k*) §§ 31, 32, 33, 34. (*l*) § 35. (*m*) § 4.
(*n*) § 5. (*o*) §§ 6, 7. (*p*) § 8.

(*q*) The first Tweed Act, 20 & 21 Vict. c. 148, § 42, fixed a close time for nets from 1st October to 1st March, and for rods from 14th October to 1st March. This section, however, is repealed, as also a special close time Act of 1 William IV. c. 54.

Salmon may be taken for the purposes of artificial propagation during the annual close time, if the leave of the owner of the fishery is obtained, and a written authority granted by the commissioners, or five of their number, and signed by them or by their clerk (*r*).

The weekly close time extends from six o'clock on Saturday afternoon to six o'clock on Monday morning. The regulation does not apply to rod fishing, for which there is no weekly close time. Neither does it apply exactly to stake nets or bag nets, provided they are placed and constructed in the manner prescribed by the Act (*s*). The difficulty of adhering to a fixed hour for opening or raising the stake and bag nets was found to be so great, if the hour occurred at high water and in stormy weather, that a weekly close time specially applicable to them was introduced, namely, from the low water next in point of time before six o'clock on Saturday afternoon, and the low water next in point of time before six o'clock on Monday morning (*t*). It was farther provided by § 12, which regulates the manner in which the weekly close time is to be observed in regard to stake and bag nets (*u*) that failure to comply with the above rule and to observe the prescribed hours of the weekly close time, or to

(*r*) 22 & 23 Vict. c. 70, § 6. The general Scotch Act contains no exception of this kind.

(*s*) See *infra*, p. 281.

(*t*) 22 & 23 Vict. c. 70, § 7. This rule was an amendment of the former Tweed Act, which applied the regular weekly close time indiscriminately to all kinds of fishing, whether by net or rod.

(*u*) In stake nets the weekly close time is to be observed by making and keeping free from obstruction a clear opening of at least three feet in width in the trap or chamber from top to bottom.

In bag nets the weekly close time is to be observed by raising and keeping out of the water the netting of the leader, 22 & 23 Vict. c. 70, § 12. It is not usual to require the leader to be removed altogether from the water, unless the Act cannot otherwise be observed. If left in the water, the leader must be effectually tied up so as to prevent it acting as a leader to the bag. The door or mouth of the bag should also be fastened together, and the pole sprung. The fact that salmon are actually captured in the net is the best evidence that it has not been left in an 'unfishable' condition; though it is of course possible that fish may be taken by accident.

remove the nets at the commencement of the annual close time, shall be exempted from the penalties imposed, if such failure is caused by storm or stress of weather. This provision, enacted for the convenience of the fishermen, will be strictly construed, and improper evasion of the rule on the pretext alluded to, will not be permitted.

The penalty for fishing either in the annual or weekly close time is one not exceeding £10, together with an additional penalty of ten shillings for every salmon taken (*v*). The boat, net, tackle, or engine used, is also forfeited.

Section 45 of the Act prohibits the use, during the annual close time, of pout nets, or any other kind of net, under a penalty not exceeding £5, and the forfeiture of the net (*x*).

The possession or the sale of salmon which have been caught during the annual close time, is prohibited under a penalty of not less than ten shillings, and not more than £2 for every fish, as well as the forfeiture of the fish, and of every boat, cart, basket, or package, in which the fish may be found (*y*). There is an exception in favour of fish which have been taken by the rod during the extended period allowed for rod fishing, and in favour of fish which have been taken for purposes of artificial propagation under the condition imposed by the Act. In order to complete an offence under this section, it is

(*v*) The penalty for fishing in close time is £10, or any lower sum, according to the discretion of the magistrate; and with regard to the additional penalty of ten shillings for each salmon taken, it has been decided that the true way to read the Act is to take the words 'not exceeding' as applying to and qualifying this penalty as well as the principal penalty of £10: *Johnston* v. *Robson*, 23 April 1868, Sc. Law Rep. v. 537. It must be remembered that the word salmon includes, according to the definition of the statute, even bull trout and parr; but a magistrate, in sentencing a person convicted perhaps of catching, during close time, a basketful of parr, is not compelled to exact, as has sometimes been supposed, the full penalty of ten shillings for each fish taken.

(*x*) 20 & 21 Vict. c. 148, § 45. This prohibition appears to be directed against fishing by net for fish other than of the salmon kind. The use of a net for yellow trout might, during the salmon time, disturb the spawning beds.

(*y*) 22 & 23 Vict. c. 70, § 10. The exchange, or the offer for sale, is also punishable. The purchase, however, even with guilty knowledge, is not mentioned as an offence; and if a case occurred where there was purchase, without possession, the transaction apparently could not be touched by the Act.

necessary that it should be within the knowledge of the person accused that the fish have been illegally caught. Such knowledge, however, may of course be inferred from the circumstances. The burden of proving that they were not illegally caught lies upon the person charged with the offence.

All boats, oars, nets, engines, and other tackle, used for salmon fishing, must be removed on or before the 17th of September, from the place where the fishing is carried on, and the adjoining premises; they must be taken to some place appointed by the commissioners, and kept there till the 13th of February,—that is, two days before the commencement of the open season. Boats, etc., used for rod fishing may remain till the 3d of December, and may be brought back to the river on the 30th January, but in the interval they must be removed and kept in the same manner as the plant used in net fishing (*z*). The penalty for an infraction of this rule is to be not more than £20 and the forfeiture of the boats, nets, or other tackle. Public ferry-boats are exempted from this rule, and also boats used by the owner or occupier of land adjoining the river, solely for the transport of himself, or his family, or servants. Public ferry-boats, however, in order to enjoy this exemption, must have the name of the owner painted on some conspicuous part, in letters of two inches in length, in white on a black ground, or in black on a white ground; the boats also must be kept locked up when not actually in use; and the infraction of this rule, as to marking the boats and so locking them up, is punishable by a penalty not exceeding £5. Ferry-boats must not be used, and the owner must not permit them to be used, for fishing, under a penalty not exceeding £10, and the forfeiture of the boat (*a*).

Private boats, in order to enjoy exemption from the rule which requires all boats to be removed from the river in close time, must have the name and surname of the owner painted

(*z*) 22 & 23 Vict. c. 70, § 11. (*a*) 20 & 21 Vict. c. 148, § 52.

on them, in the same manner as is provided with regard to ferry-boats; and if generally and ordinarily used for net fishing, they must not be used for rod fishing (*b*). An infraction of these regulations regarding private boats is punishable by a penalty not exceeding £5, and the forfeiture of the boat.

Boats which are ordinarily used for fishing with the net, must be marked by some distinguishing mark, which the commissioners are empowered from time to time to designate, in order that they may be distinguished from ferry boats, and from boats which are used indiscriminately for both net and rod fishing. Any rule which the commissioners may make on this matter must be notified to the owners of boats; and if they fail to place the distinguishing colour or mark on their boats before the commencement of the next fishing season, they become liable to a penalty not exceeding £5, and the forfeiture of the boat (*c*).

The enactment above referred to, which requires nets to be removed from the river during close time, and to be taken to some place appointed by the commissioners, does not apply to stake nets or bag nets placed in a situation allowed by law, with regard to which it is only necessary that they should be removed from the shore before the 17th of September, and kept in some place provided by the owner (*d*). But in order to be subject only to this limited regulation, they must be constructed and used in the manner provided by the Act.

Fixed Engines.—The use of any fixed net, fixed engine (*e*),

(*b*) § 53. The particular regulation last mentioned seems to proceed on the idea that if boats suitable for net fishing were allowed on the water during close time, they might be used for that purpose under cover of fishing with the rod.

(*c*) 20 & 21 Vict. c. 148, § 54. (*d*) 22 & 23 Vict. c. 70, § 11.

(*e*) 20 & 21 Vict. c. 148, § 2, defines the words 'fixed net or fixed engine' to comprehend 'all nets, cruives, engines, or devices of whatsoever construction or 'material,' which may be used for taking salmon or injuring the fisheries. The

or fixed machinery (*f*), within the limits of the river or its mouth, as defined by the original Act of 1857, is absolutely prohibited; and the offence of contravening the law in this respect, whether salmon be captured or not in the nets so placed, is punishable by a penalty not exceeding £20, and a daily penalty not exceeding £10 for every day during which a net so placed is retained, together with an additional penalty of ten shillings for every salmon taken. The engine and the fish captured are forfeited, and the engine may be removed by the commissioners and disposed of as they think fit (*g*).

Stake and bag nets, in order to be legal, must be placed beyond the limits of the river or its mouth, as defined by the original Act of 1857. They are not prohibited in that portion of the river or its mouth which, by the Amendment Act of 1859, is added on to the former limits (*h*), or in the still further extended limits which the salmon fishery commissioners fixed by their bye-law of 1863 (*i*). They must be constructed and used in obedience to the following provisions and regulations :—

chief object and effect of this enactment was to abolish the stell net, a species of engine which was of immemorial usage, and of a deadly character. One end of the net was held by the fishermen on shore, the other end being rowed out into the river and fastened there by means of an anchor. The fishermen stand in a boat near the centre of the net, and as soon as the salmon were seen or felt to strike or approach the net, the anchor was lifted, the net drawn in, and the fish captured.

(*f*) Water-wheels or other machinery used solely for manufacturing purposes, and placed in mill lades, are specially exempted from this prohibition, 20 & 21 Vict. c. 148, § 61.

(*g*) 20 & 21 Vict. c. 148, § 55. In *Smurthwaite* v. *Lilley*, Queen's Bench, 15 Nov. 1865 (not reported), a conviction under this section was sustained, against a fishery superintendent, who was present and giving directions to men engaged in working a net in the river fastened by a stake at one end, and by a nail to a windlass at the other end, and a tow rope made fast to a pin, the net being stationary for several minutes.

(*h*) 22 & 23 Vict. c. 70, 5. The prohibitory enactment in § 55 or 60 of the Act of 1857, in so far as it relates to nets, does not apply to stake or bag nets placed in the legal situation.

(*i*) The Salmon Fishery Commissioners were authorized by § 4 of the Salmon Fisheries' Continuance Act of 1863 (26 & 27 Vict. c. 50), to extend the limits of the mouth or entrance of the river Tweed. Accordingly, on 10th August 1863, they issued a bye-law, which took effect from 6th October of that year. See p. 270.

'The nets used in the formation and construction of such 'stake nets, and of the leaders of such bag nets, shall be ex- 'tended evenly in such manner that the meshes of such nets 'shall be stretched to their full opening:

'Every such stake net shall be so placed and constructed 'as that clear openings for the free passage of salmon, as 'hereinafter provided, can be made in the traps or chambers 'thereof.

'In every such stake net there shall be made, and kept 'free from obstruction during the whole period of the weekly 'close time, a clear opening of at least three feet in width in the 'traps or chambers of such stake net, from the bottom to the 'top thereof, so as effectually to allow of the free passage of 'salmon through such traps or chambers during the whole 'period of the weekly close time:

'Every such bag net shall be so placed and constructed 'as that the netting of the leaders thereof can be raised and 'kept out of the water:

'The netting of the leader of every such bag net shall, 'during the whole period of the weekly close time, be raised 'and kept out of the water:'

There is no limitation either on the height or length of the leader of the stake or bag net, and the traps may be of any size, height, or shape consistent with the observance of the above rules. A breach of the regulations is punishable by a penalty not exceeding £10 for each offence, and an additional penalty of ten shillings for every salmon taken, as well as the forfeiture of the fish and net.

Mill Dams, etc.—As regards mill dams, dykes, wears, caulds, or other necessary erections calculated to interfere with the run of the fish, the rule is that all such that are made subsequent to the passing of the Act, must be so constructed as to allow the free passage of salmon up and down the main stream of the river in its ordinary and

mean state (*k*). Mill dams, etc., which have been erected previous to the passing of the Act, and which do not comply with these conditions, must be altered accordingly, but this may be done at the expense of the commissioners; unless, since the passing of the Act, they have been altered or renewed so as to effect a breach of the regulations, in which latter case the alterations must be made at the expense of the proprietor or occupier himself. If the proprietor or occupier of such mill dam or dyke, etc., or of the mills or works for which they are erected or used, fail to construct the erection in accordance with these regulations, or if, the dyke having been erected before the passing of the Act, he fail to alter it accordingly, a notice or letter requiring him to do so must be sent to him by two of the commissioners, or by their clerk, and twenty-one days thereafter, if his failure continue, the sheriff, or in England a justice of the district, may, on the application of the commissioners or any person appointed by them, order the construction or alteration to be made in a substantial manner under the inspection of a person appointed by him, and at the cost, in each case, of the party specified above. The clause, however, provides that the height of any mill dam, etc., in existence prior to the Act, shall not be lowered in any part thereof by any works or alterations made under these provisions for obtaining a free run for the salmon (*l*).

(*k*) 20 & 21 Vict. c. 148, § 56. A wide discretion is thus left by the wording of the Act. Considerable difference of opinion may arise as to what sort of dyke will allow 'a free passage for the run of the fish;' but where this point is disputed, the Court will probably remit to a man of skill to report. As regards the rest of Scotland other than the Tweed, the commissioners under the general Act of 1862 have issued bye-laws giving specific directions for the construction of mill dams, etc.

(*l*) This provision, enacted in the interest of mill owners, etc., appears to have the effect of almost reducing the regulations to a dead letter. The height of the mill dam or dyke may of course be lowered if the proprietor choose to consent, but otherwise it is difficult to see how any improvement can be effected, or how a better passage for the run of the fish can be made without lowering the height of the dyke in some part at any rate. A hole might perhaps be made in the lower portion of the dyke, but this is a method of construction which is probably not likely to be attempted.

A mill dam, etc., altered or substituted, subsequent to the passing of the Act, for one existing prior to the passing of the Act, and so reconstructed or altered as to afford the same facilities for the passage of the fish as existed before its reconstruction or alteration, is to be considered and dealt with as one existing prior to the passing of the Act (*m*); the effect of which provision seems to be, that any alterations which the commissioners may require to be made upon it, the same being of course limited as above, may be effected at the expense of the commissioners instead of the proprietor or occupier himself. In every case where alterations are made at the order of the sheriff or justice, they are to be so carried out as to do the least possible injury to the property or works of the owner or occupier.

The above provisions do not apply to the removal of natural obstructions, which are specially provided for by § 57. All rocks, shoals, deposits of stones, gravel, sand, mud, etc., which interfere with the free passage of the fish, are to be removed or altered by the proprietor so as to allow a free run; and if the proprietor fail to do so within fourteen days after notice given to him in writing by the commissioners, the sheriff or justice may order the removal or alteration to be made at the expense of the commissioners, in such a manner as may sufficiently effect the object intended with the least possible injury to the property of the owner. Cairns in the river or connected with the bank, principally used or mainly adapted for net fishing, are to be removed by the proprietor, or, if he fail to do so, by the commissioners at his expense (*n*). Mill leads must be provided with a heck or grating placed in front of the water wheel, and extending to the full breadth and depth of the lead, with vertical bars

(*m*) 20 & 21 Vict. c. 148, § 56.

(*n*) 20 & 21 Vict. c. 148 § 58. Cairn nets were held to be legal previous to 11 Geo. IV. c. 54, § 26. *Duke of Roxburghe* v. *Ramsay*, 1850, 7 Bell's App. 248. In the case of *Ramsay* v. *Lord Polwarth* in 1814, cairn nets were recognised as legal at that period, or at least possession of them was proved and not objected to as illegal.

having a clear space of not more than three and a quarter inches between the bars. Failure to furnish a grating of this description is punishable by a penalty not exceeding £5; and the wilful injury or destruction of such grating, or the raising or removing it, except for such necessary purposes as cleaning or repairing, constitutes an offence to be similarly treated (*o*).

Beating the water, or placing any white object or net (*p*), or any thing whatever, so as to prevent, or for the purpose of preventing, salmon from entering or going up or down the river, or preventing or obstructing them in doing so in any manner, is punishable with a penalty not exceeding £10 for the first offence, and £20 for the second offence, as well as the forfeiture of the object used (*q*).

Unfair fishing is prohibited by the following regulation as to the working of wear shot nets. 'Every person who shall 'shoot or work any wear shot net in the river within the dis- 'tance of thirty yards of any other wear shot net already shot 'or being worked in the river, before such last mentioned net 'is fully drawn and landed, shall, for every such offence, be 'liable to a penalty not exceeding £5 (*r*).

The use of a leister or spear is prohibited under a penalty not exceeding £10, and an additional penalty of ten shillings for every salmon so taken; and the leister and fish taken may be seized and forfeited (*s*). The possession of a weapon of this kind within five miles of the river is punishable by a penalty not exceeding £2, and the forfeiture of the instrument (*t*).

(*o*) § 59. The bye-laws of the commissioners under the general Scotch Act permits the bars of the heck to be placed horizontally; and if vertical, allows a space of two inches only. They require also three hecks to be placed in each lade, and recommend as convenient a peculiar form of construction. These regulations, however, do not apply to the Tweed.

(*p*) This prohibition, in so far as it relates to nets, does not apply to stake or bag nets placed in a legal situation. 22 & 23 Vict. c. 70, § 5.

(*q*) § 60. (*r*) § 62.

(*s*) § 63. The use of a leister during the day time is not prohibited in the rest of Scotland.

(*t*) § 64.

Polluting the Stream.—Any person who places in the river, or allows to run or flow into it, any hot lime, or refuse of gas works, or prussiate of potash, or water in which green flax has been steeped, or, in short, any thing which shall poison any salmon or smolt, is liable to a penalty of £5 for a first offence, and £10 for a subsequent offence, besides a daily penalty of £2 for every day during which the offence is continued. The placing of cinders, rubbish, or dirt of any kind, or allowing it to fall into the river at or below high water mark, whether it be poisonous or not, is punishable by a fine not exceeding forty shillings (*u*). The general rules affecting this question, and the remedies other than those supplied by this Act, which are afforded by the common law and by statutory enactment, are discussed elsewhere (*x*).

Poaching.—Poaching, that is, the offence of fishing in a legal manner, but in a place where the offender is not entitled to fish, is punishable, if it take place between the 1st of February and the 30th of November, that is, during the open season, by a penalty not exceeding £10, and an additional penalty of ten shillings for every salmon taken, as well as the forfeiture of the fish and of the boat, net, rod, engine, or tackle used in fishing (*y*). The offence of poaching, if it is committed between the 30th of November and the 1st of February, that is, during the annual close time, is not struck at by this enactment, and under this statute, can be prosecuted only in the same manner, and under the same section, as if the act was committed by a

(*u*) §§ 65, 66. (*x*) Chapter XII. p. 225.

(*y*) This matter is regulated by the Tweed Act of 1859, § 15, the 67th section of the Act of 1857 having been repealed. The general poaching Acts of Scotland (9 Geo. IV. c. 39, and 7 & 8 Vict. c. 95) do not apply to the Tweed. Where salmon fishings are held by the crown and not leased to a subject, the privilege of fishing is customarily enjoyed by the public. The crown, however, is of course entitled to prosecute such encroachments in the same manner as a private proprietor. In some of the tributaries of the Tweed, the right of salmon fishing remains vested in the crown, and prosecutions have been raised under this section against persons fishing for salmon without a title.

proprietor on his own water. In the case supposed there is a double offence, namely, that of fishing during close time, and that of fishing on water belonging to another, but the former only can be libelled and punished under the statute, inasmuch as there is no enactment directed against poaching, except it be committed during the open season. A cumulative penalty cannot be awarded, and the offender can only be visited with the same punishment as if he had committed the single offence of fishing during close time. But if the offence of poaching during the open season be accompanied by the aggravation of using an illegal method of capturing the salmon, the offences may properly be separately prosecuted, and the double penalty awarded; each act constitutes a transgression of a distinct section of the statute, and may be dealt with accordingly.

An offence is constituted if a person enters or is found upon any ground adjacent to or near a river, with the *intent* illegally to fish for salmon, even though he be not taken in the act of fishing. The offence is punishable by a penalty not exceeding £5 (*z*). The wording of this section will cover all illegal intent to fish, whatever particular section of the statute the offender may be about to contravene. It might be supposed, from the situation of the section, and from the purport of that which immediately precedes it, that the intent referred to was intent to poach only; but there seems no sufficient reason for such a limitation of its significance, and a prosecution may properly be directed under it, not only against intending poachers, but against owners or occupiers of a fishery intending to fish during close time, or to use some illegal method of capture. Intent is to be inferred from facts and circumstances (*a*), as, for instance, if a person be found on or near the river, during the annual or weekly close time, having in his possession, or being in company with a person

(*z*) § 68. (*a*) § 69.

who has in his possession, any net or other fishing implement. There is an exception in favour of occupiers of a fishery in whom illegal intent will not be inferred, if the possession of illegal implements be within half an hour immediately after the commencement, or half an hour immediately before the termination, of the weekly close time. In the open season, an intent to poach will be inferred, if any person who is not entitled to fish in the river, be found in possession of a net or implement for killing salmon (*b*). But the actual possession of a net, etc., is not an essential item of evidence, and circumstances of any kind which shall satisfy the judge of the intent charged, is legally sufficient to warrant a conviction.

Night poaching, that is, the offence of three or more persons in company illegally fishing at night, is punishable under the twenty-seventh section of the General Scotch Act of 1862 (25 & 26 Vict. c. 97), which, by § 34 of that Act, is made applicable to the Tweed (*c*). The penalties must be prosecuted for under the procedure prescribed by the Tweed Acts.

The taking of foul or unseasonable salmon during the open season, as well as the possession, sale, or exchange thereof, is punishable by a penalty not exceeding £5 for each offence, as well as the forfeiture of the fish, the implement with which it has been taken, and the 'hampers, baskets, or 'packages' in which it is found (*d*). The burden of proving

(*b*) It is doubtful if, by the wording of the statute, it is necessary in order to infer an intent to poach, that the person in whose possession the net or other implement is found, be at the time *on or near the river*. The preceding and following sentences look as if such presence was essential, but, on the whole, it is thought that possession of a net by one who is not entitled to fish is of itself sufficient for a conviction.

(*c*) See p. 191, *ante*.

(*d*) § 70. In convictions under this section, the practice seems sometimes to be to seize and hold as forfeited the cart of a carrier or pedlar, if the fish be found therein, but the phrase, 'hampers, baskets, or packages,' seems scarcely to warrant this. There is a special authority given by § 10 of the Amendment Act of 1859, to seize any boat, cart, etc., where the offence is that of having or selling fish caught during the close time; but where the offence is that of having or selling foul fish

that the fish were not taken contrary to the statute lies on the party charged with the offence. Various questions which may arise under this section are referred to above, where the corresponding enactment in the general Scotch Act is discussed.

The use of a cleek or gaff between the 15th September and the 1st of May, is prohibited under a penalty of £5. No other instrument except a landing net may be used during this period for landing fish taken with the rod. From 1st May to 15th September, when few spent fish are in the river, a cleek may be used (*e*). Foul salmon must be immediately put back into the river, with as little injury to them as possible. Failure to do so subjects the offender to a penalty of ten shillings for each offence (*f*). This rule, however, does not apply to foul sea-trout, bull-trout, or whitling, provided they be caught with the rod and line; but the onus of proving that they were so caught lies on the accused (*g*).

The use, or possession, or sale of salmon roe, for the purpose of fishing, is prohibited under a penalty of £2, and the forfeiture of the roe (*h*). The offence is constituted by the use of salmon roe 'for the purpose of fishing.' There is no limitation to salmon fishing, and, accordingly, if salmon roe be sold or used to catch any kind of fish whatever, the penalty is incurred. And if the roe used be that of sea-trout, bull-trout, or any fish of the salmon kind, which, by the interpretation clause of the statute, are all included in the word salmon, the offence is constituted. The use, or sale, or possession of roe other than that taken from fish of the salmon kind, is not prohibited. Neither does the use, or sale, or

caught during the open season, there is no such power. A person having or selling foul fish caught during close time can only be prosecuted for the one offence, namely, that of selling during close time.

(*e*) This matter is regulated by the Act of 1859, § 16. By the former Act, March, April, and May, were the only months during which a gaff was prohibited; but as kelts were frequently found in the river beyond this period, wider limits were fixed.

(*f*) 20 & 21 Vict. c. 148, § 72. (*g*) 22 & 23 Vict. c. 70, § 17.

(*h*) This enactment, which is in § 12 of the general Scotch Act of 1862 (25 & 26 Vict. c. 97), is, by § 34 of that Act, made applicable to the Tweed.

possession of salmon roe for scientific or other purposes than fishing, constitute the offence.

The meshes of all nets used in the river must be not less than one inch and three quarters from knot to knot, or seven inches round. Any person who uses a net of smaller dimensions, or has one in his possession within five miles of the river, or fishes with or has in his possession a double net, is liable to a penalty of £10, and an additional penalty of ten shillings for every salmon taken by means of such a net, as well as the forfeiture of the fish and net (*i*). There is an exception in favour of nets used solely for taking herrings or shrimps, and landing nets used in rod fishing, the meshes of which may be of any convenient size.

Pout nets, rake hooks, or other engines of that description used for killing salmon, are prohibited, under a penalty not exceeding £2, and ten shillings for every fish so taken, as well as the forfeiture of the fish and implement (*k*). Scoop nets, or other implements used for lifting salmon out of the chambers of stake or bag nets, are exempted from the prohibition.

Any person who catches a salmon while fishing for trout must deliver it up to the owner of the salmon fishery, under a penalty of £20 for each salmon so caught and not delivered up (*l*). If the party be actually fishing for salmon under cover of his right to capture trout, he will of course be liable to the higher penalty provided by § 15 of the Act of 1859. It must be remembered that, as the word 'salmon' includes all fish of the salmon kind, sea trout or parrs caught under these circumstances, must be given up (*m*).

(*i*) 22 & 23 Vict. c. 70, § 13. The measurement of the meshes should be taken when they are wet. The placing two or more nets behind or near to each other, in such manner as to practically diminish the mesh of the nets used, or the covering the nets used with canvas, or the using any other artifice so as to evade the spirit of the enactment, will be considered as an offence against the statute.

(*k*) § 14. (*l*) § 73.

(*m*) Fish taken in these circumstances ought not to be put back into the water, nor are they liable to seizure by the water bailiffs if found in the possession of an angler before an opportunity has occurred of delivering them to the owner of the salmon fishery. *Parnell* v. *Smith*, Sheriff Court of Roxburghshire, August 1863.

The destruction of salmon fry otherwise than by rod and line, is dealt with specially in § 74. Taking from the river smolts, fry, or salmon spawn, or obstructing in any way the passage of the young fish, or injuring or disturbing them, or interfering with the spawn or spawning beds, subjects the offender to a penalty of £10, and an additional penalty of two shillings for every fish so taken, as well as the forfeiture of the implements by which they have been taken, and the packages in which they are found.

Taking smolts or salmon fry by the rod and line during the months of April and May, or having them in possession, is punishable by a fine of sixpence for the first offence, and for a subsequent offence, a fine of £2, and an additional penalty of two shillings for every fish taken, as well as forfeiture of the rod and line, and of the basket or package in which the fish are found (*n*).

The Trout Fishing Act, 8 & 9 Vict. c. 26, is applied not only to those parts of the Tweed and its tributaries which are within Scotland, but also to those parts which are in England (*o*). Offences against that Act committed in England may be tried before any justice who has jurisdiction in the district, and the penalties which that Act imposes may be recovered under the procedure provided by the Tweed statute (*p*).

Water Bailiffs—their Powers.—Water bailiffs may be appointed by any general or district meeting, or by any two commissioners specially authorized to do so; and a form of oath is prescribed by the Act which they are to take upon entering into office (*q*).

The water bailiffs and their superintendent have the

(*n*) § 75. See also p. 197. Where salmon fry are taken in ignorance of their character, see p. 187.

(*o*) § 76. See p. 262 *et seq.*

(*p*) See p. 292 *et seq.* (*q*) § 36.

powers and authorities of constables in regard to all matters connected with the Act, in the same manner as if offences against the Act were breaches of the peace. They are entitled, for the purpose of preventing offences, or of detecting and apprehending offenders, to enter upon any grounds adjoining the river, or with boats or otherwise, to enter upon any fishery in the river (*r*) for the purpose of preventing or detecting unlawful fishings or obstructions in the river, and to moor, anchor, or otherwise fix their boats at such places as they shall find convenient, provided that by such mooring, anchoring, or fixing their boats, they do not obstruct or impede any legal mode of fishing.

Apprehension and Prosecution of Offenders.—Any person whatever, whether interested in the fishery or not, including the water bailiffs and superintendent, may without warrant or authority, seize *brevi manu*, and detain any person found committing any offence against the provisions of the Act. This power does not exist except where the offender is taken in the act; and there can be no arrest without a warrant unless the offender is actually engaged at the time in committing the offence; he cannot, for instance, be followed and apprehended at his house (*s*). The same regulations with regard to apprehension are applied by the statute to cases of poaching, and the same powers, with the same limitation, exist in regard to one offence as to the other. (*t*). The power of arrest, with regard to poachers, is regulated, at least throughout the rest of Scotland, by the Act of 9 Geo. IV. c. 39,

(*r*) § 37. In § 2 of the Act, 'fishery' is defined to mean salmon fishery; but as all parts of the Tweed and its tributaries are more or less frequented by fish of the salmon kind, the power may probably be held as extending to the whole river and streams connected with it.

(*s*) § 38.

(*t*) In the other parts of Scotland, the law in regard to the power of arrest is, as has been explained, different from that which regulates the Tweed fisheries. Under the general Scotch Acts, power of apprehending is not the same in cases of poaching, and in mere contraventions of the Fishery Acts.

but it may be questioned whether the Tweed is included in the operation of that statute, or of the subsequent poaching Act of 7 & 8 Vict. c. 95. The Tweed and its tributaries are not exempted by name from these statutes; and in ordinary circumstances the Scotch parts of them would of course be liable to their provisions; but as the question of poaching is taken up and specifically dealt with by the Tweed Acts, it may be presumed that previous enactments on the subjects are thereby overridden. As regards the right of arresting poachers, the question of the application of the general Acts is of little importance, for the same powers are conferred in either case; but prosecutions must be distinctly founded on one statute or the other.

A penalty not exceeding £5 is imposed on any person resisting or assaulting any officer, 'or any other person em-'ployed in the execution of the Act' (*u*). It is not clear whether the fine is incurred by resisting a private person attempting the arrest of an offender. Such a person may be said to be employed, though not officially, in the execution of the Act; and it seems reasonable that, when gratuitously performing a public duty, he should be protected in the same manner as when he is paid for doing it.

When an offender is arrested in the act, he may be conveyed forthwith by the person apprehending, or by a constable or other peace officer, before the sheriff, or any justice (*x*) who has jurisdiction in the place where the offence is committed, or where the offender resides or is found. The same procedure is provided by the Act against offenders in England or in Scotland (*y*). But when the offence is committed in Scotland, the Act seems to require that the same person who apprehends should convey the offender before the sheriff or

(*u*) § 39.

(*x*) Magistrates are not disqualified from acting by possessing an interest in the fisheries, unless the magistrate, as proprietor of a fishery, or his lessee therein, be a party to the prosecution. § 40.

(*y*) §§ 38, 82.

justice. On the offender being brought before him under arrest, the sheriff or justice shall forthwith examine the offender, and may thereupon discharge him if he think proper, or he may be committed until caution *de judicio sisti* be found. The sheriff or justice, or justices, may then, on a complaint (*z*) being made at the instance of the procurator-fiscal of the county, district, or place (*a*) where the offence is committed, or at the instance of any one or more of the commissioners, or of their clerk, or at the instance of the superintendent of water bailiffs (*b*), issue a summons or warrant (*c*)

(*z*) The complaint should be in the following form, or as nearly so as may be. It may be written or printed, or partly written and partly printed, § 93:—

To the Honourable the Sheriff of the County of [*or* Her Majesty's Justices of the Peace for the County or Burgh of , *or other place*],

The Petition and Complaint of *A. B.*, Procurator Fiscal of Court for the Public interest [*or other party entitled to prosecute*];

Humbly Sheweth,

That *C. D.*, now or lately residing at , in the county of , has contravened the section of 'The Tweed Fisheries' Act 1857,' in so far as upon the day of 18 , or about that time, he [*specify the particulars of the offence*], by which offence the said *C. D.* has incurred a penalty not exceeding Pounds [*specify any other forfeiture or penalty which has been incurred*].

May it therefore please your Lordship [*or* Honour] to grant warrant to summon the said *C. D.* to appear before your Lordships [*or* Honours] to answer to this Complaint, and to be dealt with in terms of the said Act.

According to Justice, &c.

A. B., P. F., (*or other party entitled to prosecute*).

(*a*) The chief constable or superintendent of police, in some instances, occupies the position of procurator-fiscal in the Justice of Peace Court. It is usual, however, on the Tweed, to prosecute fishery offences in the Sheriff Court at the instance of the Procurator-Fiscal.

(*b*) The power to prosecute was extended to the superintendent of water-bailiffs by § 18 of the Tweed Act of 1859, 22 & 23 Vict. c. 70.

(*c*) The summons or warrant, or deliverance on complaint, should be in the following form, or as nearly so as may be. It may be written or printed, or partly written and partly printed, § 93.

[*Place and Date.*]

The (*Magistrate*) having considered the foregoing complaint, grants warrant for bringing *C. D.*, complained of, immediately before him (or before any one or more of her Majesty's Justices of the Peace for the said County) [*or* Burgh] of [*or other place*], [*or* appoints the said *C. D.* to be served with a copy of the foregoing complaint, and of this deliverance], and grants warrant for citing the said *C. D.* to appear before him [*or* before any one or more of her Majesty's Justices

against the person complained against. The summons or warrant must fix a place of compearance, and a time not less than six free days after service (*d*).

The summons or warrant, and a copy of the complaint, must be served on the person complained against, either personally or by leaving the same with some inmate at his usual place of abode. On the appearance of the accused at the place and date named, the trial proceeds; evidence is led, and on proof of the offence by the oath of one or more credible witnesses, or on the confession of the accused, the sheriff or justices may convict the offender, and inflict such penalty as

of the Peace for the County or Burgh of [*or other place*], within the ordinary Court House [*or other place*], at , on the day of 186 , at o'clock noon, then and there to answer to the charge made against him in the said complaint, under certification, and grants warrant at the instance of both parties for summoning witnesses.

E. F [*Magistrate.*]

The citation itself, and the execution, should be after the following forms :—

C. D., Take notice that you are summoned to appear before the Sheriff of [or any one or more of her Majesty's Justices of the Peace for the County [*or* Burgh] of [*or other place*], in a Court to be held within the ordinary Court House at [*or other place*], on the day of 18 , at o'clock noon, to answer to the Complaint against you at the instance of *A. B.*, to a copy of which this citation is attached. This citation served on the day of 18 , by me, sheriff officer [*or* constable] of the County of [*or other place*], before , witness.

L. M., Sheriff Officer [*or* Constable.]

Execution of Citation.

I, *L. M.*, sheriff officer [*or* constable] of the County of [*or other place*], duly summoned *C. D.*, residing at , in the County of to appear before the Sheriff of the County of [*or* before any one or more of her Majesty's Justices of the Peace for the County] [*or* Burgh] of [*or other place*], in a Court to be held within the ordinary Court House at [*or other place*], on , the day of 18 , at o'clock noon, to answer to the Complaint at the instance of *G. H.* against him. This I did by delivering to him personally [*or* leaving for him at his dwelling-house at aforesaid] a Citation to the above effect, attached to a full copy of the said Complaint and of the warrant thereon, dated the day of 186 , before *N. O.*, subscribing witness.

L. M., Sheriff Officer [*or* Constable.]

N. O., witness.

(*d*) The requisite formalities of the complaint and warrant and conviction are discussed at p. 204 *et seq.*

the Act provides (*e*). The offender may also be condemned in the costs of the prosecution, to such extent as the sheriff or justices may think fit. In default of payment of the penalty and costs, the offender may at once, on a warrant of the magistrate, be committed to prison for any period not exceeding two months in the case of a first offence, three

(*e*) The conviction, if in Scotland, should be in the following form, or as nearly so as may be. It may be written or printed, or partly written and partly printed, § 93.

[*Place and date.*]

The [*Magistrate*] in respect of the evidence adduced [*or* of the judicial confession of the said *C. D.*, *or* in default of the appearance of the said *C. D.*, *as the case may be*], convicts the said *C. D.* of the offence charged, and decerns and adjudges the said *C. D.* to pay the sum of of penalty, with the sum of of costs, to the commissioners appointed by 'The Tweed Fisheries Act, '1857,' or their treasurer, and failing payment by the said *C. D.*, forthwith* grants warrant for recovery of the said penalty and costs by poinding or distress of his goods and effects, and summary sale thereof at the expiration of not less than forty-eight hours after such poinding or distress; appoints a return or execution of such poinding or distress and sale to be reported within eight days from this date, and in the meantime grants warrant for detaining the said *C. D.* in the prison at until such return be reported, or until sufficient security be given by the said *C. D.* for his appearance before the [*Magistrate*] on the day of next.†

* [*If it shall appear at the trial that no sufficient poinding can be made within the jurisdiction of the Magistrate, say here*, 'and in respect it appears that no sufficient poinding or distress can be had whereon to levy the said penalty and costs, 'grants warrant to imprison the said *C. D.* in the prison at for the space 'of unless the said penalty and costs be sooner paid.']

† [*If any article be forfeited, add here*, 'and further decerns and adjudges the 'boat, net (*or other article*), specified in the said complaint to be forfeited, and directs the same to be destroyed at the sight of the complainer (*or* to be sold, and the proceeds thereof paid to the treasurer of the said commissioners, *as the case may be*.')]

NOTE.—*Warrants of poinding or distress in the above form may be granted separate from the conviction, if necessary.*

CONVICTION IN ENGLAND.

to wit,

Be it remembered, That on the day of in the year of our Lord 18 , *C. D.* is convicted before us *E. F.* and *G. H.*, two of her Majesty's Justices of the Peace for the county or [*or other place*] [*describe the offence generally, and the time and place when and where committed*], contrary to the provisions of 'The Tweed Fisheries Act, 1857.' [*Then add adjudication.*]

Given under our hands and seals the day and year first above written.

E. F.
G. H.

months in the case of a second offence, and four months in the case of a third or subsequent offence (*f*).

If the accused fail to appear at the place and date named, the trial may proceed in his absence on proof of the due service of the summons or warrant, and a conviction may follow in default of appearance without further proof of the offence (*g*). The Tweed Act differs in this respect from the law which prevails in the rest of Scotland, where a conviction in absence must proceed upon competent evidence, and the commission of the offence must be established to the satisfaction of the Court.

Previous convictions may be proved against the accused (*h*); but only where they are for offences under the Tweed Act; and where there was a previous conviction under the Act for such an offence, for instance, as using a boat without the name of the owner painted thereon, it is not likely that the Court would allow it to be received in a prosecution perhaps for killing foul fish. Previous convictions, to bear weight against the accused, should be for similar, or at least, cognate offences.

Penalties for offences under the Act may be recovered by civil action for debt in any county court, including the Small Debt Court (*i*), as well as by criminal prosecution (*k*); and the penalty and costs awarded against the defendant under either procedure, may be levied, under warrant of the sheriff or justice, or justices, by poinding, or distress and sale (*l*).

(*f*) 22 & 23 Vict. c. 70, § 20, and 20 & 21 Vict. c. 148, § 84. The power of immediate imprisonment in default of payment, without the intervention of a poinding or distress and sale, was only introduced by the later Tweed Act.

(*g*) § 82. (*h*) § 82.

(*i*) An action in the Small Debt Court is, of course, less severe upon the defender, the expenses connected with it being much smaller.

(*k*) § 82.

(*l*) § 83. For form of warrant of poinding and distress, see note, p. 295. Any overplus out of the proceeds of the distress and sale, after paying penalty and costs, to be returned to defendant, § 85. It is also provided by § 86, that 'No 'poinding or distress levied by virtue of this Act shall be deemed unlawful, nor shall 'any party making the same be deemed a trespasser, on account of any defect or

It has been decided that offences under the Tweed Fisheries Acts may be competently prosecuted under the Summary Procedure Act (*m*). The offender, unless he give sufficient security for his appearance on the day fixed for the return to the warrant of poinding or distress and sale (the day fixed to be not more than eight days from taking the security), may be kept in custody, on the order of the sheriff or justice, till the return can be conveniently made. But the formality of issuing a warrant of poinding or distress and sale need not be gone through, if it appears to the sheriff or justice, by the admission of the offender or otherwise, that no sufficient poinding or distress can be had within the jurisdiction to satisfy the penalty and costs. And in this last case, or in the event of the poinding and distress proving insufficient after the warrant therefor is issued, the offender may be committed to prison under warrant of the sheriff or justice (*n*) for any period not exceeding two months in the case of a first offence, three months in the case of a second offence, and four months

' want of form in the summons, conviction, warrant of poinding or distress and sale, ' or other proceeding relating thereto, nor shall such party be deemed as trespasser ' *ab initio* on account of any irregularity afterwards committed by him, but all per- ' sons aggrieved by such defect or irregularity may recover by action full satisfac- ' tion for the special damage.'

(*m*) *Halliday* v. *Bathgate*, 1 June 1867, 5 Irvine, 382.

(*n*) The warrant of imprisonment, to be granted in case of a return being made that no sufficient goods and effects could be found, should be in the following form, or as nearly so as may be. It may be written or printed, or partly written and partly printed, § 93.

[*Place and date.*]

The [*Magistrate*] in respect of the return made that no sufficient effects can be found whereon to levy the said penalty and costs, grants warrant to imprison the said *C. D.* in the prison at for the space of from this date , unless the said penalty and costs be sooner paid, and decerns.

E. F. [*Magistrate.*]

Warrant of Liberation.

[*Place and date.*]

The [*Magistrate*] in respect of the return of a sufficient poinding or distress and sale of the effects of the said *C. D.* [*or* in respect of payment having been made of the said penalty and costs, *as the case may be*], grants warrant to the keeper of the prison at for the immediate liberation of the said *C. D.*, and decerns.

E. F. [*Magistrate.*]

in the case of a third or subsequent offence, unless the penalty or costs be sooner paid (*o*). Penalties must be sued for within six months (*p*); and when recovered, they are to be paid over to the clerk of the commissioners to be applied to the purposes of the Act (*q*).

In addition to the statutory penalty, offenders are bound to make good any damage to property that may have been committed by them, the amount of damage in case of dispute to be determined by the sheriff or justice, and the sum in case of non-payment to be levied by poinding or distress under magisterial warrant (*r*).

Summonses, warrants, convictions and sentences may be enforced within other jurisdictions than that in which they have been granted, by obtaining an indorsation or warrant of concurrence from the sheriff, sheriff-clerk or a justice, within whose jurisdiction the person or effects of the party or witness against whom it is issued, may be found (*s*).

Witnesses may be summoned by the sheriff or justice; and on failure, without reasonable excuse, to appear, and if a reasonable sum has been paid or tendered to them for expenses, they are liable to a penalty not exceeding £5 (*t*).

The Act provides that 'no written record of evidence 'shall be necessary, unless either party, before such complaint 'shall be heard, requires the sheriff or justice, or justices, to 'take notes of the evidence to be adduced; which such sheriff 'or justice or justices shall do, or cause to be done, and the

(*o*) § 84. Under the second Tweed Act (22 & 23 Vict. c. 70, § 20), the offender, in default of payment of penalty and costs, may at once, on a warrant of the magistrate, be committed to prison for the periods specified. See *ante*, p. 295.

(*p*) § 88. (*q*) § 87. (*r*) § 89.

(*s*) § 90. The indorsation or warrant of concurrence should be in the following form:—

[*Place and date.*]

I, *M. N.* Sheriff [*or* Justice of the Peace, *or* Sheriff-Clerk] of the County of , grant concurrence to the within warrant, so that the same may be enforced within this County.

M. N.

(*t*) § 91.

'notes so taken shall be deemed and held in any subsequent 'proceedings as a sufficient record of the evidence under such 'complaint.' If the accused fail to require a note of the evidence to be kept, he is deprived of the advantage of having an appeal upon the merits, that is to say, upon the question of whether the conviction was supported by the evidence (*u*). If the prosecution be under the Summary Procedure Act, the right of appeal still exists, provided that the accused at the trial has demanded a note of the evidence to be kept; for it has been decided that § 16 of the Summary Procedure Act, which provides that it shall not be necessary in any proceeding under the Act, to preserve a note of the evidence adduced, does not overrule the provision in § 93 of the Tweed Act, requiring the magistrate, when called upon, to take a note of the evidence (*x*). The 16th section of the Summary Procedure Act is held not to dispense so absolutely with the keeping of a record of evidence as to justify the sheriff or justices in refusing, in a prosecution under the Tweed Act, to make a note of the evidence if required to do so, in terms of § 93 of the Tweed Act.

Either party may appeal against any judgment of the sheriff or justices by which he thinks himself aggrieved. Appeal from a judgment of the sheriff is to the next Circuit Court of Justiciary under the rules and regulations

(*u*) *Halliday* v. *Bathgate*, 1 June 1867, 5 Irvine, 382. It has also been decided that notes of evidence taken by the sheriff, if not taken at request of either party, do not constitute a record of the evidence under the Act at which the Court can look, so as to reach the merits of the case. *Johnston* v. *Robson*, H. C., 25 May 1868, Sc. Law Rep. v. 537.

(*x*) *Halliday* v. *Bathgate*, *ut supra*. It was argued against a conviction under the Summary Procedure Act, that § 27 of that Act provides that nothing therein contained shall extend the jurisdiction of the sheriff; and the effect of bringing the complaint for a Tweed offence was to extend the jurisdiction of the sheriff; because, on the one hand, § 93 of the Tweed Act ordained the sheriff, when called on, to keep a note of the evidence with a view to the exercise of the right of appeal conferred by § 96 of the Act; and § 16 of the Summary Procedure Act required that no note should be kept; and, in effect, that was to extend the jurisdiction of the sheriff, because it rendered his judgment final. This argument, however, was repelled, because it was not averred that the accused had asked for a record of the evidence at the trial.

which apply to prosecutions under the general Scotch Acts, the particulars of which have been explained above (*y*). Appeal from a judgment of a justice or justices, must be made to the next general, stated, or adjourned meeting of the justices of the county, burgh, or place for which such justice or justices shall act, in Quarter Sessions assembled. An appeal to Quarter Sessions must be made within four months of the date of the judgment appealed against, and ten days' notice in writing, stating the nature and grounds of the appeal, must be given to the opposite party (*z*). Along with the appeal, whether it be to the Circuit Court or the Quarter Sessions, the appellant must lodge with the sheriff-clerk or clerk of the peace, who is to judge of its sufficiency, a bond of caution for the payment of any penalty or costs which may have been awarded against him. The judgment of the Circuit Court or Quarter Sessions is final.

The Act provides also for appeals against convictions or other adjudications in England. The justices there alone have jurisdiction to try offences under the Act, and either party may appeal from their judgment to the General Quarter Sessions for the county or place in which the cause of appeal shall have arisen. The appeal must be made within four months of the date of the judgment appealed against, and ten days' notice in writing, stating the nature and grounds of the appeal, must be given to the opposite party. The appellant must enter into recognizances, with two sufficient sureties, to abide the result of the appeal (*a*). Appeals to Quarter Sessions are disposed of in a summary way; or the justices may adjourn then, if they think proper, to the following sessions. The Court have power to mitigate penalties or forfeitures, to confirm or quash judgments, and order any money paid by any party, or levied by poinding or distress of his goods, to be returned to him; and they may make such order concern-

(*y*) P. 208, *et seq.* (*z*) § 96. (*a*) § 97.

ing the costs, both of the adjudication and of the appeal, as they may think reasonable. No proceedings under the Act are void from want of form merely (*b*).

Management of Joint Fisheries.—The management of joint fisheries is regulated by § 77:—'In the case of any fishery 'usually fished by nets, which belongs or is held by two or more 'owners jointly, any one of such owners may, by writing under 'his hand, require the other owners jointly interested therein 'to agree with him for the joint fishing of such fishery, and to 'fix the number of men, boats, nets, and other appurtenances 'necessary for such fishing; and on such owner furnishing 'his proportionate number of men, boats, nets, and appur- 'tenances so fixed and agreed upon, and contributing and 'paying his proportionate share of the burdens and working 'expenses of such fishery, such owner shall be entitled, for his 'own use and behoof, to a share of the whole produce of such 'fishery, in proportion to his interest therein; and every joint 'owner of such fishery may lease his interest therein to such 'person and on such terms and conditions as he may think 'fit; and every such lessee shall, during his lease, have all 'the rights hereby conferred on such joint owner.' Section 78 provides for arbitration in case of difference. 'If, for 'fourteen days after being thereto required in writing as 'aforesaid, the joint owners of such fishery, or any one of 'them, shall refuse or delay to fix or agree upon the number 'of boats, nets, or appurtenances necessary for such fishery, 'any one or more of such joint owners may, by writing under 'his hand, require that all such matters be referred to arbi- 'tration, and may name an arbiter to act on his behalf, and 'require each of the other joint owners to name an arbiter to 'act on his behalf; and in the event of such joint owners, or any 'of them, refusing or delaying for fourteen days, after being

(*b*) § 94.

'so required to name such arbitrator or arbitrators, any one 'or more of such joint owners may apply to the sheriff, or any 'justice, to appoint a fit and proper person to act as sole arbi- 'trator in such matters, and to decide therein, and to fix the 'number of men, boats, nets, and appurtenances necessary 'for such fishery, and the shares of the several joint owners 'in the produce thereof; and on such application the sheriff or 'justice shall, and he is hereby authorized, to appoint such 'arbitrator; and the arbitrators appointed by such joint owners 'as aforesaid may choose an umpire to act in case of their 'differing in opinion, and the decision or decree arbitral to 'be pronounced by such arbitrators or umpire, or by any 'arbitrators appointed by the sheriff or justice, shall be final, 'and not subject to review in any court, or by any process 'whatsoever.'

Assessment of Proprietors.—The commissioners are authorized to impose upon all proprietors of fisheries an annual assessment in the first place of £20 per cent. until all debts existing at the date of the Act, and the expenses of passing the Act, are paid. After these obligations are discharged, the annual rate levied is to be of such amount as the commissioners may fix, not exceeding £20 per cent. The assessment is to be in proportion to the rent or yearly value of the several fisheries as ascertained by the commissioner, or by the sheriff or justices on the application of any owner who may think himself aggrieved by the assessment, provided notice of the application is given to the clerk within ten days after notice of the assessment is made to the owner. The rate is to be paid yearly or half-yearly as the commissioners may direct, and payment is to be made in the first instance by the tenant with a right of recovery against the proprietor; and if the tenant fail to pay, the rate may be levied on the proprietor directly (*c*). Payment of the rate may be enforced by poind-

(*c*) § 79.

ing and sale, proceeding on the warrant of the sheriff or justice at the application of the clerk (*d*).

The rates are to be applied, (1) in paying the undischarged debts contracted by the commissioners under previous Acts (*e*), (2) in paying the costs of passing this Act, and incidental expenses (*e*); and (3) in paying the salaries of the clerk, treasurer, collectors, superintendent, water bailiffs, and other officers, and other expenses incurred in carrying the Act into execution (*f*).

(*d*) § 80. The application for a warrant should be in the following form:—

To the Honourable the Sheriff of the County of [*or* Her Majesty's Justices of the Peace for the County or Burgh of , *or other place*].

The Petition of *A. B.* Clerk [*or* Treasurer] to the Commissioners appointed under 'The Tweed Fisheries' Act, 1857;'

Humbly Sheweth,

That *C. D.* is Owner [*or* Tenant or Occupier] of a salmon fishery in the river Tweed at in the County of , and is liable for the sum of , being the amount of rates leviable under the said Act as specified in the annexed certificate of the Collector appointed by the said Commissioners, and which sum of is still due and unpaid.

May it therefore please your Lordship [*or* Honours] to grant warrant for recovery of the said sum of with costs, by poinding or distress of the goods and effects of the said *C. D.* and selling the same, in terms of the sixty-ninth section of the said Act. *A. B.*

2. *Certificate by Collector.*

I, *E. F.*, Collector appointed by the Commissioners acting under the 'The 'Tweed Fisheries' Act, 1857,' make oath and say, that *C. D.* is liable for the sum of of rates leviable under the said Act for the year [*or* years] ending the day of 18 , and that he has not paid the said sum. *E. F.*

Sworn at this day of Eighteen hundred and before me. *G. H.* [*Magistrate.*]

3. *Warrant.*

Having considered the foregoing complaint, grants warrant for recovery of the said sum of with costs, by poinding or distress of the goods and effects of the said *C. D.*, and summary sale thereof, on the expiration of not less than forty-eight hours after such poinding and distress; appoints the said sum of with the full costs of poinding or distress and sale, to be paid to the said *A. B.*, the complainer, from and out of the proceeds of such poinding or distress and sale, and the surplus [if any] to be paid to the said *C. D.* when demanded.

G. H. [*Magistrate.*]

(*e*) The rates levied on the extended limits of the Tweed, as defined by § 4 of the Act of 1859, are not to be applied to the payment of debts contracted before that portion was added on. 22 & 23 Vict. c. 70, § 5.

(*f*) 20 & 21 Vict. c. 148, § 81.

CHAPTER XVII.

THE SOLWAY.

THE common law which regulates the constitution and nature of the right of fishing, and certain general maxims which govern the use of all property, are the same in all parts of Scotland,—in the Solway and its tributaries as well as elsewhere. But the statutory law, which regulates the exercise of the right both of salmon fishing and of trout fishing, is in some respects peculiar, and it is convenient that the subject under both these heads should be treated separately.

The Scotch portion of the Solway, and those of its tributaries which are within this country, were subject to the ancient Scotch Acts relating to salmon fishing, in all cases, unless there is a special exemption in their favour, or unless an exemption in their favour occurring in a particular Act can be held to have the retrospective or prospective effect of excluding them from the operation of past or future enactments. At an early period, exemptions either of the 'waters of 'the Solway,' or of a particular river adjoining the English border, were enacted by the Scottish legislature. The first instance of such exemption occurred in 1429. An important Act, fixing a general close season for salmon, had been passed in the reign of James I. (1424, c. 10 & 35) (*a*); but by a subsequent enactment in the same reign (1429, c. 131), the Solway and Tweed were exempted from its operation.

(*a*) The chapters of the old Scots Acts of Parliament are throughout numbered differently in different editions.

This Act ordained that the former one should be 'firmelie 'keeped, out-takand the waters of *Solway* and *Tweede*, quhilkis 'sall be reddie to all Scottis-men all times of the zeir, als 'lang as Berwick and Roxburgh ar in the English mennis 'handes (*b*).' The reason for the exemption was obvious; spoiling the enemy was a laudable, or at least a permissible pursuit, and if the restrictions could not be enforced upon the English side, the Scottish monarch saw no reason why they should be enforced on the other. The next Scottish statute from which the *Solway* was excepted was the Act of Queen Mary, 1563, c. 3 (or 68), 'anent cruves and zaires.' By that Act all cruives and yairs in waters that ebb and flow, and upon sands and schauldes far within the water, were ordered to be destroyed and put away; but the Act concludes thus: 'Pro-'viding alwayes that this Act on naways be extended to the 'cruives and zaires being upon the water of the *Solway*.' At this period then, the water of the *Solway* was unquestionably exempted from the prohibitions against cruives and yairs; or, in other words, from the prohibitions against fixed engines, for 'cruives and yairs' have been held to have that extended signification. The previous Acts directed against this manner of fishing had not, it is true, exempted the *Solway* from their operation; but when the law upon the subject was re-cast by the Act of 1563, the saving clause occurring therein exempted the *Solway* from its operation. Again, in the Act of James VI., 1597, c. 265, anent slayers of red fish in forbidden time, 'the 'waters of *Annand* and *Tweid*' are excepted. Again, by the Act of James VI., 1600, c. 11, slaying of salmon in forbidden time was declared to be theft, except in the rivers '*Annand* and '*Tweed*;' and the reason for the exception is thus explained in a subsequent Act:—'The rivers of *Tweed* and *Annand*

(*b*) It may here be remarked that this exemption of the Solway and Tweed from the general law regarding close time, was by force of the Act itself, merely temporary and conditional, and has been abrogated by subsequent enactments. See the case of *Short* v. *Sadler*, 27 May 1807, referred to in Hutcheson's *Justice of the Peace*, ii. 582, note *c*.

'were then exempted because the said rivers at that time 'devyded at many parts the bounds of Scotland and England 'adjacent to them, whereby the forbearance upon the Scots 'part of the slauchter of salmond in forbidden time and of 'kipper, smolts, and black fish, at all times, would not have 'made salmond any mair to abound in these waters, if the 'like order had not been observed upon the English side.' To ordain restrictions upon one portion of the same waters, which could not have been enforced upon other portions, would have been to place Scottish subjects at a serious disadvantage with their English neighbours, without materially affecting the destruction of the salmon.

After the union of the crowns of England and Scotland in the person of James VI., the exemption was, in one instance at least, withdrawn, and the Scotch Act of 1600, c. 11 (which declared the slaying of salmon in forbidden time, and foul fish and smolts at all times, to be theft) was by the statute 1606, c. 5, declared, in the new circumstances of the sovereignty, to extend to the *Tweed* and *Annan* also. This repeal of the exemption, however, extended only to the immediately preceding statute, the prohibitions of which were thus made applicable to the *Tweed* and *Annan* as well as to the rest of Scotland. This change of the law however is now of no practical importance, as the statute in question, whether in its restricted or extended operation, is obsolete. The exemption of 'the waters of *Annand* and *Tweid*,' in the Act 1597, c. 265, anent slayers of red fish and of fish in forbidden time was not repealed; neither was the temporary exemption of 'the 'wattiris of *Sulway* and *Tweyde*' in the Act of 1429, c. 22 or 131 (anent a general close time), repealed; and it must therefore be assumed that the prohibitions enacted thereby continued to have no operation on those waters. It may be remarked, however, that as regards the subjects to which these statutes refer, both the *Solway* and the *Annan*, as well as the rest of Scotland, are now subject to express legislation.

A more important statute, however, and the exemption which it contains, still remains to be considered. The Act of Queen Mary, 1563, c. 3, which prohibited the use of cruives and yairs where the sea ebbs and flows, and which has already been referred to, contained an express exemption of such engines when situated 'upon the water of the *Solway*.' This exemption has not been repealed (*b*). Sixteen years later another Act against cruives and yairs (1579, c. 27) was passed in the reign of James VI. This Act contains no express exemption of the *Solway*, but it has no application to those waters, because it revives the former Acts 'after the forme 'and tenor of the same,' *i.e.*, excluding the *Solway*. Again, two years later, another Act (1581, c. 15) was passed with the same object, and without any express exemption of the *Solway;* but here also the unrecalled exemption in the Act of 1563 must be held to apply (*c*). In the reign of James VII., an Act was passed (1685, c. 24 or 20), entitled an Act for preserving game, which revives a number of former statutes relating to game and fishings, and ordains them to be put in force. Among other Acts revived are the Act 1424, c. 11 (or 12), the Act 1457, c. 34 (or 86), and the Act 1477, c. 73, statutes which prohibit the use of cruives and yairs, which do not create any exception in favour of the *Solway*, and which became law before any such exemption was introduced. The Act 1685, c. 20 (or 24) further appointed certain persons called masters of game, in various parts of the country, including the counties of Dumfries and Wigtown, and in the Stewartry of Kirkcudbright, to enforce its provisions under a commission for that purpose, for a period of seven years, and until the commission should be recalled. From this limitation to the commission granted to the masters of game, it has been argued, that the statute was only a tem-

(*b*) *Little and Powell* v. *Grierson*, 7 Dec. 1824, 3 S. 370 or 261.

(*c*) In 1793 it was decided that the Act 1581, c. 15, was not then in force. *Proc. Fisc. of Stirling* v. *Gillies*, 1793, M. 14299.

porary one, and that not only the appointment of these officers, but also the revival of the former statutes was only for a period of seven years. But although the commission granted was only for a limited period, it has been decided that the Act was perpetual in so far as it revived the former Acts (*d*). The question thus arises whether the exception of 'the water 'of the *Solway*' from the Act 1563, c. 68, still subsists, or whether it has been abrogated by the later Act just referred to; in other words, whether the exemption of the *Solway* in the Act of 1563, prohibiting cruives and yairs, has a prospective effect, so as to take those waters out of the operation of any subsequent prohibitions, or revival of old prohibitions, of a like nature that might be enacted. If this question had not been decided or judicially assumed, it might be supposed that it was more probable, on the whole, that the exemption had no such prospective effect. The difference in the circumstances of the kingdom at the two dates might fairly account for the change of policy in regard to the *Solway*. In 1563 the two countries were held by distinct and hostile governments, and it was not wonderful that the debateable ground of the *Solway* should be exempted from restrictions which could not be enforced over its whole surface, and which, if enforced on the Scotch side only, would be certainly broken through by the English marauders. In 1685, however, both kingdoms were ruled over by one sovereign; a more amicable policy had, since the accession of James I., been adopted in legislation; and it might therefore be supposed that the exception in favour of the *Solway* had lapsed by implication, and that

(*d*) In the case of the *E. of Kinnoul* v. *Hunter*, 1802, M. 14301, relating to salmon fishing in the Tay, it was assumed in argument on both sides of the bar that the Act 1685, c. 24, was perpetual in so far as it revived former statutes; the pursuer expressly founded on it, and one of the grounds of defence most strenuously insisted in was that another Act (1563, c. 68) founded on by the pursuer, had *not* been revived by the Act. In the case of *Trotter* v. *MacEwan*, 8 July 1809, F. C., it was expressly decided that an Act revived by the statute 1685, c. 24, was a subsisting Act; and in the case of *Kelly* v. *Smith*, 1780, M. 4995, there is a decision of the Court of Justiciary to the same effect.

the fisheries of all parts of the kingdom were thenceforward to be governed by uniform statutory regulations. The question, however, of the present force or application of the exception has been settled by the case of *Oswald* v. *M'Whir* (*e*), and by the case of *Murray* v. *Earl of Selkirk* (*f*), where it was decided or assumed both in the Court of Session and in the House of Lords, that the waters of the *Solway* were still protected from the prohibitions against fixed engines, by the exemption in the Act of 1563, and that subsequent enactments, though containing no express exemption, did not affect them.

The next statute affecting the *Solway* occurs in 1804, when the Solway Fisheries Act (44 Geo. IV. c. 45) became law.

Up till this period (1804) 'the water of the *Solway*,' that is, the estuary proper, had been dealt with separately from the rivers which flow into it. The river *Annan*, as we have already seen, had been specially and individually exempted from the old Act 1597, c. 265, anent slayers of red fish, etc., in forbidden time; and again, from the Act 1600, c. 11, which declared the slaying of salmon in forbidden time to be theft. The river *Nith* had been subjected to special legislation by an Act of Charles II. (1681, c. 101), which was repealed and replaced by a special Act in 1759, 33 Geo. II. c. 21; and again repealed and replaced by a special Act in 1792, 32 Geo. III. c. 94. This last Act was also repealed by the Solway Act of 1804 (44 Geo. III. c. 45), and the *Nith*, like the other tributaries of the Solway, became subject to the provisions of the general Act. The exemptions in the Acts 1429, c. 131 (or 22), and 1563, c. 3 (prohibiting fixed engines), extended only to 'the waters of the *Solway*,' and did not include the *Esk*, the *Annan*, the *Nith*, the *Dee*, the *Urr*, the *Fleet*, the *Cree*, the *Luce*, or, in short, any river flowing into the estuary. These rivers were wholly within Scottish ground; and the reason

(*e*) 8 Mar. 1833, 11 S. 552; H. of L. 13 April 1835, 1 Sh. & M'L. 393.
(*f*) 6 July 1821, 1 S. 106; H. of L, 9 June 1824, 2 Shaw's App. 299.

which prompted the exclusion of *Solway* did not apply to them. There are, in fact, various decisions which show that though the *Solway*, properly speaking, was exempted from the prohibition of cruives and yairs contained in the Act of 1563, the rivers flowing into it were in the fullest sense subjected to those restrictions (*g*). The Act of 1581, c. 15 (or 111), is another instance of the distinct legislation which was applied to the tributaries of the *Solway* apart from the estuary itself. This Act ratifies and approves former Acts anent the destruction of cruives and yairs, and appoints certain persons to put the Acts into execution, and *inter alios* certain magistrates to enforce the Acts in the case of rivers flowing into the *Solway*. It may be held that the special jurisdictions created by the Act no longer subsist, but the Act itself has been held to be perpetual in other respects (*h*).

The fisheries in the *Solway* and the whole of its Scotch tributaries, with the exception of the *Annan* and its affluents (*i*), and the *Esk* and its affluents (*k*), are now regulated

(*g*) *D. of Queensberry* v. *M. of Annandale*, 1771, M. 14279; *Dirom* v. *Littles*, 1797, M. 14282. These cases relate to the river *Annan*, and in both of them, methods of fishing by means of fixed engines were found to be illegal. The case of *Murray* v. *Earl of Selkirk*, 6 July 1821, 1 S. 106, and 2 Shaw's App. 299, establishes the same proposition in reference to the river *Dee*; and the cases of *M'Whir* v. *Oswald*, 6 Mar. 1833, 11 S. 552, 1 Sh. & M'L. 393, and 15 S. 299, 873, and *Little and Powell* v. *Grierson*, 7 Dec. 1824, 3 S. 370, with reference to the *Nith*. Lord Brougham in the case of *M'Whir* v. *Oswald*, expressly says, that the exception in the Act of 1563 would not extend to the rivers *Annan* or *Esk*, though he held that it applied to that part of the firth which is towards the mouth of the *Nith*. In this case, the question came to be disposed of by a jury, when it was found that the stake nets in question were not situated in the *Solway* properly so called, and that they were therefore not protected by the exception in the statute. It is to be observed, that in these two cases the Act of 1563 was the statute founded on, and no notice appears to have been taken of the revival, in 1685, of the older Acts which contained no exception.

(*h*) *Magistrates of Aberdeen* v. *Fishers of Dee and Don*, 1701, Br. Supp. iv. p. 506.

(*i*) The *Annan* and its tributaries were originally included in the operation of the Act, but were taken out of it in 1841 by the Annan Act, 4 Vict. c. 18. *Vide* p. 314, *et seq.*

(*k*) The *Esk* and its tributaries were originally included in the operation of the Act, but, by the English Salmon Fisheries' Amendment Act (28 & 29 Vict. c. 121, § 63), they were placed under the English Acts of 1861 and 1865. *Vide* p. 316.

by a special Act, 44 Geo. III. c. 45 (*l*). Certain provisions of this Act, which was passed in 1804, have been repealed or replaced by subsequent enactments, but with these exceptions, which will be noted hereafter, the Act is in full force. The 1st section of the Act fixes a close time for salmon, grilse, sea trout, and herling, from 25th September to 31st December in the *Bladenoch*, *Luce*, *Poltanton*, and *Cree;* from 25th September to 1st February in the *Dee* and the *Fleet;* from 25th September to 10th March in the *Solway* Firth, the *Nith*, the *Urr*, and any other stream connected with the *Solway* not specified; and a further close time, applying to the whole district, for the spear or leister, extending to 10th March. The close time thus enacted has been replaced by the close time for net fishing and the shorter close time for rod fishing, fixed by the bye-laws of the commissioners acting under the general Salmon Act of 1862 (*m*). The close time now regulating the different rivers running into the *Solway* and their respective districts, will be found in the Appendix. The prohibition against the use of a spear or leister from 25th September to 10th March has not been replaced by any enactments in, or bye-law under, the general Act, and may therefore be assumed to subsist. The penalty under the Solway Act for non-observance of the close time is £5 for the first offence, £15 for the second offence, and £20 for the third or subsequent offences, as well as the forfeiture of the fish and implements used.

(*l*) This Act originally extended to both sides of the Solway; but by the English Salmon Fishery Act of 1861 (24 & 25 Vict. c. 109), it was repealed in so far as it related to salmon in England. It still continued to regulate salmon and other fisheries on the Scotch parts, and fisheries other than salmon in the English parts of the Solway,

(*m*) Neither the Solway Act, nor any of its provisions, however, are repealed by the general Act. It appears, therefore, doubtful, whether penalties could not be sued for, for fishing at a time when it is close season under the Solway Act, though it is not so under the general Act. Keeping in view § 9 of the general Act of 1862, the close time of the Solway or Annan Acts may perhaps be held to be entirely superseded by the close time fixed by the commissioners; but it is by no means clear that the general Act of 1862 contains any enactment which renders it legal to fish at a time when the Solway or Annan Act declared it to be illegal. *Vide* note (*f*), p. 316.

By §§ 2 and 3 boats and engines of every description used for fishing, except ferry boats and pleasure boats, are to be removed from the water by the 25th September, under a penalty of £10. Taking salmon, grilse, sea trout, and herling, which are foul or out of season, subjects the offender to a penalty of £5, £15, or £20; but an owner or occupier of a fishery, if he returns the fish immediately to the water alive, is not liable (*n*). Taking or destroying the brood of fish of the salmon kind, or neglecting to use means to prevent their being washed over the sides of artificial cuts or sluices (*o*), or placing lime or flax in the water, or beating the water (*p*), is an offence punishable by a similar fine. Unlawful nets or other engines may be destroyed under the orders of the sheriff or justices (*q*).

Any person who is not the owner or occupier of a fishery, or has not the authority of the owner or occupier, who takes or attempts to take or destroy in any manner or at any time of the year any fish of the salmon kind, or any other fish whatsoever, in any river, stream, pond, or mill dam, etc., which communicates with the sea is liable to a penalty of £5 for the first offence, £15 for the second offence, and £20 for the third or subsequent offences, as well as the forfeiture of the fish and implements (*r*). Owners and occupants of fish-

(*n*) §§ 4, 5.

(*o*) §§ 6, 7.

(*p*) § 12. In the case of *Bennet* v. *Jones*, 27 Sept. 1862, 4 Irvine 228, a conviction for the offence of beating the water, which had been obtained in the Justice of Peace Court, was set aside by the Circuit Court, on special circumstances.

(*q*) § 8.

(*r*) § 9. It has been decided that this section applies not only to fish of the salmon kind, but to ordinary trout. *Henderson* v. *Johnstone*, 11 Dec. 1862, 1 Macph. 128. In consequence of this decision, a bill was introduced into Parliament in 1863 to render uniform the law with respect to fishing with the single line for trout and other fish not of the salmon kind, in Scotland; in other words, to repeal the Solway Act in so far as it related to fishing without permission for fish other than salmon. The bill did not become law.

The Act 9 Geo. IV. c. 39, and the Amendment Act 7 & 8 Vict. c. 95, for the preservation of salmon, do not apply to the Solway or its tributaries; there is a special exception in its favour, 9 Geo. IV. c. 39, § 14.

In the case of *Carrick* v. *Jones*, H. C. 5 June 1865 (not reported), in a suspen-

ings, and persons authorized by them, may angle with the rod from 1st June to 25th September (*s*). Persons having in their possession or selling salmon during close time (unless they can prove the fish to have been caught in a place where it is not close time), or foul fish, incur similar penalties.

Any person convicted of poaching for salmon or any other fish, with blackened face, or otherwise disguised, may be fined £10, and imprisoned with hard labour for any time not exceeding two months and not less than fourteen days; and in default of payment of the penalty further imprisonment may be awarded not exceeding six months and not less than one month (*t*).

By § 15, the meshes of nets (except herring and shrimp nets) are ordered to be of not less than one inch and three quarters from knot to knot, or seven inches round; and various modes of fishing are prohibited. But this section, whatever the wording of it might cover, is ineffectual as a prohibition of fixed engines in the estuary, inasmuch as, by the preceding section, existing rights and modes of fishing are protected, and the question left as open as before for litigation.

All persons may apprehend offenders; and prosecutions under the Act are to be conducted before the sheriff or justices, according to the forms therein specified; and an appeal from the judgment of the local magistrates lies to the Circuit Court of Justiciary (*u*). Any one of the public is entitled to prosecute under the Act; and if the prosecution is at the instance

sion of a conviction under § 9, it was decided that the Solway Act was not repealed or superseded by 24 & 25 Vict. c. 109, or 25 & 26 Vict. c. 97.

(*s*) § 10.

(*t*) § 16.

(*u*) §§ 17-27. It has been decided that the statute allows a review on the merits. *Bennet* v. *Jones*, 27 Sept. 1862, 4 Irvine 228. In the case of *Henderson* v. *Johnstone*, 11 Dec. 1862, 1 Macph. 128, an appeal to the Circuit Court against a judgment upon a complaint under the Act was certified to the Second Division of the Court of Session, and disposed of there. The Summary Procedure Act is of course applicable to offences under the Solway and other fishery Acts.

of the procurator-fiscal, or other public official, expenses may be awarded against him if the complaint is dismissed (*x*).

For the purpose of the Act, and that only, the *Solway* is declared to extend 'over and across the whole of the said 'arm of the sea which lies eastward from a place called the 'Hotel at Skimberness, in the parish of Abbey Holme, in the 'county of Cumberland, and from thence in a direct line 'across the said arm of the sea, extending northward to the 'large house at Caresthorn of Arbigland, in the stewartry of 'Kirkcudbright; and from thence westward along the shore 'of the said arm of the sea which adjoins the county of Dum-'fries, the stewartry of Kirkcudbright, and the county of 'Wigtown aforesaid, for two miles in breadth, pointing south-'ward from high water mark down to a place called the 'Mull of Galloway in the said county of Wigtown; and also 'in like manner extending westward along the shore of the 'said arm of the sea, which adjoins the said county of Cum-'berland, from the hotel at Skimberness aforesaid, for two 'miles in breadth, pointing northward from high water mark 'down to a place called Hadbarrow Point, in the parish of 'Millun, in the said county of Cumberland; and likewise for 'the sole purposes of this Act, and no other, the limits of the 'mouth or entrance of the river Nith, situate in the county 'of Dumfries aforesaid, shall, for the future, be deemed and 'taken to be and extend from the large house at Caresthorn 'of Arbigland aforesaid, in a line across the said river Nith 'due east' (*y*).

The Annan.—The fisheries of the river *Annan* have been, from an early period, regulated, in certain particulars, by exceptional legislation. It was exempted, as we have seen (pp. 303, *et seq.*), from some of the Acts of the Scottish Parliament,

(*x*) *Walker* v. *Jones*, 27 Sept. 1862, 4 Irvine 234.

(*y*) See the case of *Short* v. *Sadler*, 27 May 1807, referred to in Hutcheson's *Justice of the Peace*, vol. ii. 582, note c.

and after the union of the two kingdoms in the person of James VI., again restored to the jurisdiction of the general Scotch Acts. It was subject, as we have seen, to the Act of 1563 against fixed engines, not being included in the exemption which that Act contained in favour of 'the waters of the '*Solway*.' In 1804 the Solway Act included the *Annan* in its operation, and till 1841 its provisions regulated the fisheries in that river. In the latter year, a special Act (4 Vict. c. 18) was passed, which repealed the Solway Act in so far as it related to the *Annan* and its tributaries, and which enacted new regulations for the preservation and improvement of the *Annan* fisheries. This Act is now in force, though certain of its provisions have been replaced by the general Act of 1862, to which statute the *Annan* and its tributaries are also subject. The Act extended not only to the river *Annan* itself and its tributaries, but to that portion of the sea coast lying between the river *Sark* on the east and the river *Lochar* on the west, and including the whole sea coast within those limits, from the land on the Scotch side at high water mark of spring tides into the sea at low water mark of spring tides. The Act, which extends only to fish of the salmon kind, contains a variety of regulations for the protection and improvement of the fisheries. A Board of Commissioners consisting of fishery proprietors is appointed, and their powers and duties are defined (*z*). An annual close time, extending from 25th September to 10th March is appointed; and a weekly close time varying with the season (*a*). Mill dams (*b*) and nets (*c*) are regulated; and a penalty of £2 and forfeiture of fish taken and implements, is imposed on any person fishing within the district who is not the owner or occupier, and has permission from the owner or occupier (*d*). With regard to fixed engines, the only reference

(*z*) 4 Vict. c. 18, §§ 2–21. The provisions regarding the appointment of commissioners are replaced by the Act of 1862 constituting District Boards.

(*a*) §§ 22, 27, 32. *Vide* note (*m*), p. 311. The regulation of fixed engines during the weekly close time is provided for by § 32.

(*b*) § 36. (*c*) § 39. (*d*) § 33. *Vide* note (*r*), p. 112.

thereto which the Act contains is in § 31, which provides that nothing in the Act shall affect stake nets or other fixed machinery which are *lawfully* erected within the limits of the Act. The Act, however, does not define what stake nets or other fixed engines are lawful.

The Esk.—By the English Salmon Fisheries Amendment Act (*e*) of 1865, the river *Esk* together with its banks and tributary streams up to their source, is placed under the operation of the English Acts of 1861 and 1865. But all offences committed within Scotch jurisdiction are to be prosecuted and punished in the manner directed by the Scotch Act of 1862. The Solway Act (44 Geo. III. c. 45) originally applied to the *Esk*, and it is doubtful whether it is not still in operation there. On those portions of the *Esk* and its tributaries which are within England, the Solway Act, at least in so far as regards salmon, was repealed by 24 & 25 Vict. c. 109, § 39 (schedule), but on the Scotch parts it continued in operation. By 28 & 29 Vict. c. 121, § 63, the English code was introduced on the *Esk* and its tributaries, and though the Solway Act was not expressly repealed as regards the Scotch parts, it may perhaps be considered that it was the intention of the legislature to replace it entirely by the provisions of the English Acts.

The next statute affecting the Solway and its tributaries, including the *Annan* and the *Esk*, is the general Salmon Fisheries Act of 1862 (*f*); and it will be seen that, as regards settling the question of the legality of stake nets in the Sol-

(*e*) 28 & 29 Vict. c. 121, § 63.

(*f*) The Solway Act of 1804 is not repealed by the general Scotch Act or the general English Act, but remains in force (*Carrick* v. *Jones*, H. C., 5 June 1865, not reported); though the Annan, the English coast and rivers, and perhaps the Esk, have been taken out of its operation. Where the Solway Act or the Annan Act are clearly inconsistent with the Act of 1862, they may be held to be repealed by implication; but where the same offences are dealt with by both Acts, the prosecutor may proceed upon either. The preferable and customary course, however, is to adopt the later Act. *Vide* note (*m*), p. 311.

way, very little progress was thereby effected. The whole provisions of the Act of 1862 apply to the Scotch parts of the Solway (*g*) in the same manner as to the rest of Scotland, but the clauses which affect it more especially are §§ 6 (1) and (2), 10 (*h*), and 33. By § 6 (1) the commissioners under the Act are authorised and empowered 'to fix and define, for the 'purposes of this Act and the other Acts relating to salmon 'and salmon fisheries in Scotland, the natural limits which 'divide each river in Scotland (including the estuary thereof) 'from the sea, in so far as the same may not be already fixed 'by statute or by judicial decision.' Under the authority of this section of the Act, a bye-law was issued by the commissioners, which took effect from 7th March 1865. The bye-law fixes a common estuary for the Esk, Annan and Nith (*i*), and the boundary is declared to be 'a straight line drawn from the 'Hotel of Skinburness in the parish of Abbeyholme in the 'county of Cumberland, to the large house at Carset House 'of Arbigland, in the stewartry of Kirkcudbright' (*k*).

(*g*) The *Esk* and its tributaries were subsequently (1863) taken out of the operation of the Act, and placed under the provisions of the English Acts of 1861 and 1865. (28 & 29 Vict. c. 121, § 63).

(*h*) § 10 simply enacts that no mode of fishing should by the Act be made legal which was or might have been illegal before.

(*i*) These three rivers are the only salmon streams on the Scotch shore of the Solway, as it was defined by the then existing statutes. The line drawn by the commissioners as bounding the estuary of the *Esk*, *Annan*, and *Nith*, is the same as that which was fixed by the Act 44 Geo. III. c. 45, as limiting the operation of the Solway Act. The line which the commissioners have drawn as limiting the '*Solway* '*Firth*,' is much further to the seaward, and comprises a much larger extent of coast than was contained by the Solway Firth under the Solway Act.

The competency of the commissioners' bye-law has been objected to on the ground that it is disconform to the provisions of the Act, and that a common estuary cannot be fixed for three separate rivers; but there seems to be nothing irregular in the proceeding, and a similar course has been adopted in other cases. It has not been decided whether a reduction is necessary to set aside a bye-law properly authenticated.

(*k*) The object effected by the definition of this boundary line is not apparent. In the other rivers of Scotland the boundary line of the estuary, as drawn by the commissioners, serves the purpose which was formerly attained only by means of a jury trial, namely, defining the line within which fixed engines were illegal under the old Acts. The estuary line of the rivers flowing into the Solway cannot, how-

By § 6 (2), the commissioners are authorized and empowered 'to fix, for the purposes of this Act, the limits of the 'Solway Firth, having regard to an Act passed in the forty-'fourth year of the reign of his Majesty King George the 'Third, chapter forty-five.' Under the authority of this section, a bye-law was issued by the commissioners, which took effect from 15th April 1864. The bye-law fixes, as the outward boundary of the *Solway Firth*, 'a straight line drawn 'from the Mull of Galloway, in the county of Wigtown, to 'Hodbarrow Point, in the parish of Milam, in the county of 'Cumberland.' The object effected by this line is the definition of the limits within which the following section operates.

Section 33 enacts, that 'From and after the 1st of Janu-'ary 1865 (*l*), the provisions of the said Act (*m*) (24 & 25 Vict. 'c. 109), intituled an 'Act to amend the laws relating to 'fisheries of salmon in England,' shall extend and apply to 'salmon fisheries in the waters and on the shores of the 'Solway Firth, situate in Scotland, as the same may be fixed 'by authority of this Act, and to the rivers flowing into the 'same, in so far as such provisions relate to the use of fixed 'engines for the taking of salmon: provided that all offences 'against such provisions shall be prosecuted and punished as

ever, have this effect, for the waters of the Solway are exempted from the prohibition of fixed engines. Fixed engines placed in a situation at or near the mouth of any of the rivers mentioned where the sea ebbs and flows, but which cannot be described as being within the water of the Solway, are not of course protected by the exemption in favour of the water of the Solway. In such a situation they are struck at by the old statutes; but the proper description of the situation may still be a question for a jury, in order to determine—whether or not the locality is one which is prohibited by the old Acts, and also—whether or not the locality can be described as within the waters of the Solway, which would bring it within the exemption. The estuary line drawn by the commissioners is of no use for this purpose, and in this instance cannot obviate the necessity for a special inquiry before a jury.

(*l*) Four years grace was thus allowed after the passing of the English Act of 1861, before it came into operation upon the Scotch shores of the Solway. It was supposed that the statute would prove effectual to put down all fixed engines in that locality; and time was therefore allowed for the exhaustion of existing plant, of nets, etc., by tear and wear.

(*m*) This section is verbally corrected by 26 & 27 Vict. c. 50, § 3.

'directed by this Act.' The provisions of the English Act, which are thus applied to the use of fixed engines on the Scotch portion of the *Solway*, are chiefly contained in § 11. That section enacts, that 'No fixed engine (*n*) of any descrip-'tion, shall be placed or used for catching salmon, in any 'inland or tidal waters (*o*); and any engine, placed or used in 'contravention of this section, may be taken possession of or 'destroyed (*p*); and any engine so placed or used, and any 'salmon taken by such engine shall be forfeited; and in addi-'tion thereto, the owner of any engine, placed or used in 'contravention of this section, shall, for each day of so placing 'or using the same, incur a penalty not exceeding ten pounds; 'and for the purposes of this section, a net that is secured 'by anchors, or otherwise temporarily fixed to the soil, shall 'be deemed to be a fixed engine; but this section shall not 'affect any ancient right or mode of fishing as lawfully exer-'cised at the time of the passing of this Act, by any person, 'by virtue of any grant or charter, or immemorial usage; 'provided always that nothing in this section contained shall 'be deemed to apply to fishing wears or fishing mill dams.'

With regard to the exception in the foregoing clause, in favour of any ancient right or mode of fishing as lawfully exercised at the time of the passing of the Act, by virtue of any grant, or charter, or immemorial usage, the English Salmon Fisheries' Amendment Act of 1865 (28 & 29 Vict. c. 121), contains the following provision (*q*), (§ 39), 'Be it

(*n*) By the interpretation clause, 'fixed engines' are declared to include 'stake 'nets, bag nets, putts, putchers, and all fixed implements or engines for catching 'or for facilitating the catching of fish.' 24 & 25 Vict. c. 109, § 4.

(*o*) 'Tidal waters' is explained to include the sea and all rivers, creeks, streams, and other waters, as far as the tide flows and reflows. 'Inland waters' are declared to mean 'all waters that are not tidal.' § 4.

(*p*) Any person is entitled to act under this section. *Williams* v. *Blackwall*, 22 April 1863, 8 Law Times (N. S.) 252.

(*q*) The Scotch Act of 1862 does not place the Solway fixed net fisheries under this Act of 1865, for the Act was not then in existence. But the Act of 1865 is simply an amendment of the Act of 1861, under which the fixed engines of the Solway were specially placed, and the two Acts, it is declared, shall be read together (§ 1. 2).

'enacted, that the said provisions shall extend to exempt 'from the said eleventh section such fixed engines only as 'were in use for catching salmon during the open season of '1861, in pursuance of an ancient right or mode of fishing 'as lawfully exercised during such open season, by virtue of 'any grant, or charter, or immemorial usage, which last men-'tioned fixed engines are hereinafter referred to as privi-'leged engines. But inasmuch as, in certain cases, fixed 'engines in use during the four years previous to 1861, or 'one of such years, may, from temporary causes, have been 'out of use during the year 1861, and it is expedient to pro-'vide for such cases, it is hereby declared, that if it is proved 'to the satisfaction of the special commissioners appointed 'under this Act, that any fixed engine not in use during 'the open season of 1861 was in use during one of the said 'four years, proof of its user during one of such four years 'may be substituted for proof of its user during the open 'season of 1861; so, nevertheless, that no person shall, by 'proving the use of different fixed engines during the said 'years, be allowed to be entitled to a number of privileged 'engines exceeding the greatest number of such engines in 'use by him during some one of the years 1857, 1858, 1859, '1860, 1861 (*r*).'

All fixed engines accordingly are distinctly illegal in the *Solway*, unless 'lawfully exercised at the time of the passing 'of the Act (*i. e.*, 1861, or one of the four preceding years), 'by virtue of any grant, or charter, or immemorial usage.'

(*r*) By the same statute (English Salmon Fisheries' Amendment Act 1865, 28 & 29 Vict. c. 121, §§ 40-45), the English commissioners are empowered to decide on the legality of the fixed engines, and to abate and remove those which, in their opinion, do not come under the exemption. An appeal is allowed against their decisions to the courts at Westminster. The commissioners, however, decided, on 18th April 1867, that their powers in this respect do not extend to fixed engines on the Scotch shore of the Solway; and on 21st June 1867, it was announced in Parliament by the Home Secretary, that the law officers of the crown concurred in the decision, and that nothing could be done with reference to the engines on the Scotch side without further legislation.

A right of cruive fishing, for example, in any of the *Solway* rivers where the tide does not reach, conveyed by a specific grant, is thus clearly exempted from the prohibitions; and an express grant of fixed engines, even in those parts of 'the water of the *Solway*, where the sea ebbs and flows,' will confer an indefeasible right. In other parts of Scotland an express grant of fixed engines in an estuary is ineffectual; but in the *Solway*, where these methods were not illegal prior to 1862, an express grant anterior to that date will confer a right which cannot be defeated by the recent prohibitions. But an express grant of fixed engines in a situation where the sea ebbs and flows, and which, nevertheless, cannot be described as within 'the waters of the *Solway*,' will not confer a right; for such a situation is not exempted from the prohibitions of the old Acts, and a mode of fishing which is illegal by statute cannot be acquired even by express grant.

It is not so clear what amount of 'usage' in the absence of special grant will be effectual to protect fixed engines on the Scotch shores of the *Solway* from the prohibitions of the Act, and to bring them under the exemption therein contained. The question depends a good deal upon the construction which is to be placed upon the phrase 'immemorial 'usage'—whether it is to be construed according to the signification of the term in English or in Scotch law. It may be argued, on the one hand, that the expression occurs in an Act purely English, that the clause when imported into the Scotch statute book must carry along with it the meaning which it originally bears, that the intention of the legislature was clearly and admittedly to introduce the English law of fixed engines to the Scotch waters of the *Solway*, and that the phrase having a fixed signification in England, the main object in view was to subject the Scotch waters to a provision exactly similar, and thus to place the whole estuary

under one code. On the other hand, it may be maintained that the expression, though occurring originally in an English statute, as soon as it became part of the law of Scotland must be construed according to our own interpretation, that § 11 of the English statute actually became a Scottish enactment, and that, at all events, though the use of fixed engines on the Scottish shore of the *Solway* may be subjected to certain provisions of an English statute, it is impossible in such a manner to introduce a rule so seriously affecting heritable rights in Scotland, and the method by which they may be acquired. The determination of this difficulty may in some cases be of serious importance, for the construction of the phrase, 'immemorial usage,' in the law of England differs considerably from the interpretation given to it by the law of Scotland. In England uninterrupted possession for forty years is not considered as proof of immemorial usage, and a much longer period, probably so long at least that the memory of man runneth not to the contrary, is required (*s*); while in Scotland proof of exclusive possession for forty years upon an adequate title is considered equivalent to proof of immemorial usage.

The question whether particular fixed engines upon the Scottish shore of the *Solway* fall under the exemption in the Act and whether they are now legal, is one therefore which can only be determined upon proof. If an express title is founded upon, it will be necessary, in order to establish a legal right, to prove that the engines in question are situated in a locality where they are not prohibited by the old statutes;

(*s*) *Bevins* v. *Bird*, 6 May 1865, 12 Law Times (N. S.) 306; *Rawstorne* v. *Backhouse*, 25 Nov. 1867, New Reports, Common Law Series. In the case of *Walker* v. *Wyndham*, 24 Feb. 1805, at Carlisle Assizes, the question was raised whether a right to fish on the English coast of the Solway with certain nets had been established by immemorial usage, a change having been made twenty years before in the description of net used. 'Halfmoon' stake nets had been in use beyond living memory, but in 1844 the Scotch form of stake net was introduced. The jury considered the mode of fishing to be in substance the same, and a verdict was returned for the defendant.

or, in other words, that they are situated within 'the water of the *Solway*' and not within that portion of a river where the tide ebbs and flows, and which is yet not a part of the *Solway*. The only method of deciding this question is by proof in each particular case, and by the verdict of a jury or a judgment of the Lord Ordinary. The line fixed by the commissioners' bye-law gives no assistance in this inquiry, for all that it does is to define the limits which divides the common estuary of the *Esk*, *Annan*, and *Nith*, from the outer sea, without indicating the boundary line which is to be held as dividing each river and those portions of it where the tide ebbs and flows (a locality where fixed engines are prohibited by the old Acts), from 'the waters of the *Solway*' (a locality where fixed engines are not prohibited by the old Acts). Where there is no express title to fixed engines, but where prescriptive use is founded upon as conferring a right, the same inquiry regarding the locality of the engines must of course be entered into, prescription being equally ineffectual with express grant to confer a right to fish where it is illegal by statute. Proof of the use of fixed engines for the prescriptive period will also be required, and whether forty years is sufficient or not will depend upon the solution of the question above referred to, namely, whether the phrase 'immemorial usage' occurring in the Act is to be construed according to its English or Scotch signification (*u*).

Fixed Engines other than Stake Nets.—The fixed engines in use in the *Solway* are chiefly stake nets; but besides these there are others, either used expressly for killing salmon, or in which salmon are occasionally caught. 'Half-nets' are nearly similar to the stell nets formerly used in the Tweed, the only

(*u*) The question regarding the legality of stake nets at Newby, on the Scottish shore of the Solway, near the mouth of the river Annan, is at present before the Court, in the case of *Johnstone* v. *Mackenzie and Beattie*; but no decision has yet been arrived at. It is thought that legislation alone can bring the question to a satisfactory settlement.

difference being, that instead of being fixed by an anchor, the outer end of the net remains stationary in the hand of a man, who stands in the water until a fish strikes the net, or until he is forced by the rising of the tide to bring it to land. Half-nets used in this manner clearly fall within the description of fixed engines. 'Poke-nets' are stretched between two poles fixed in the sand near the mouth of a river, where the tide rises and falls, and the fish are captured by entanglement in the slack poke or pocket of the net. These nets are undoubtedly fixed engines; but, according to the statements of the fishermen, they are used mainly for the capture of white fish. It is asserted, on the other hand, that they are erected chiefly for the purpose of taking salmon, and that except for the expectation of salmon being captured in them, their use would be abandoned by the fishermen. Their real character and object is essentially a question for proof (*x*). 'Raise-nets' are also used in the *Solway*, and the same remarks regarding their character and use may be applied to this description of engine. The net is fixed between poles or stakes, but rises from the bottom with the rising tide, letting the fish pass upwards into the 'lakes' or flats, and falls with the ebbing tide, enclosing the fish, and preventing their return downwards. Raise-nets are clearly fixed engines.

Regulation of Fixed Engines.—The thirty-third section of the Scotch Act of 1862 declares, that the Scotch waters of the *Solway* shall be regulated by the provisions of the English Act, 'in so far as such provisions relate to the use of fixed 'engines for the taking of salmon.' The chief provisions

(*x*) In the case of *Carruthers* v. *Jones*, H. C., 1 June 1867, 5 Irvine, p. 400, certain fishermen had been convicted in the Justice of Peace Court for killing salmon during close time in poke nets in the Solway. The Court refused to listen to a plea on the merits, to the effect that the accused were in exercise of the admitted right to fish for white fish at any season, because this was just a plea of not guilty; and by the Act of 1862, under which, and the Summary Procedure Act, the conviction was obtained, review on the merits was excluded.

thus imported into the Scotch law are contained in § 11 above referred to; but § 20 of the English Act provides for the removal of fixed engines during close time; and § 22 relates to the weekly close time for cribs or traps, and must therefore be held as imported into Scotland, and as regulating the matter in the *Solway* and its tributaries. The provisions, however, apply only to cruives; and if they apply, along with § 11, to the Scotch shores and rivers of the *Solway*, must be held as superseding the directions regarding the close time for cruives, contained in the bye-law of the Scotch commissioners (*z*).

Offences against the above regulations with regard to fixed engines, though committed in contravention of an English Act, are to be prosecuted and punished in the manner directed by the Scotch Salmon Act of 1862 (*a*).

(*z*) The section (24 & 25 Vict. c. 109, § 20) runs as follows: 'The proprietor or occupier of any fishery for salmon shall, within thirty-six hours after the commencement of the close season, cause to be removed and carried away from the waters within his fishery, the inscales, hecks, tops, and rails, of all cruives, boxes or cribs, and all plants and temporary fixtures used for taking or killing salmon, and all other obstructions to the free passage of fish in or through the cruives, cribs, and boxes within his fishery; and if any proprietor or occupier omits to remove and carry away, in manner aforesaid, any things hereby required to be removed and carried away, he shall incur the following penalties; that is to say—

(1) He shall forfeit all the engines or other things that are not removed and carried away in compliance with this section.

(2) He shall, for every day during which he suffers such things to remain unremoved beyond the period prescribed by this Act, pay a sum not exceeding £10.

Section 22 enacts, that in cruives the weekly close time must be observed by maintaining a clear opening of not less than four feet in width from the bottom to the top; the inscales and rails must be removed, and a penalty of £5 is imposed for every contravention of the regulation, and £1 for every fish taken, and forfeiture of the fish.

(*a*) 25 & 26 Vict. c. 97, § 33.

APPENDIX.

SALMON FISHERIES (SCOTLAND) ACT,

25 & 26 Vict. c. 97.

An Act to regulate and amend the Law respecting the Salmon Fisheries of Scotland.—[7th August 1862.]

WHEREAS it is expedient that the Acts relating to the salmon fisheries in Scotland should be amended, and that further provision should be made for the regulation of fisheries, the removal of obstructions, and the prevention of illegal fishing: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. *Short Title.*—This Act may be cited for all purposes as 'The 'Salmon Fisheries (Scotland) Act 1862.'

2. *Interpretation of Terms.*—The following words and expressions in this Act shall have the meanings hereby assigned to them, unless such meanings be repugnant to or inconsistent with the context:

'Commissioners' shall mean the commissioners appointed and acting under the authority of this Act for the time being:

'Clerk' shall mean the clerk to be appointed by any District Board:

'Sheriff' shall mean the sheriff of the county in Scotland of which he is sheriff, and shall include sheriffs substitute:

'Justice' or 'Justices' shall mean any justice or justices of the peace acting for the county, city, or burgh where the matter requiring the cognizance of such justice or justices shall arise:

'Secretary of State' shall mean one of her Majesty's principal secretaries of state:

'Proprietor' or 'Proprietors' shall mean and include any person, company, or corporation who is the proprietor of a salmon fishery, or who receives or is entitled to receive the rents of such fishery on his or their own account, or as trustee, guardian,

or factor for any person, company, or corporation, and shall also include her Majesty in right of her crown:

'Bye-law' and 'Bye-laws' shall include all rules, orders, and regulations made by the commissioners under the authority of this Act:

'Salmon' shall mean and include salmon, grilse, sea trout, bull trout, smolts, parr, and other migratory fish of the salmon kind:

'Fisheries' and 'Fishery' shall mean salmon fisheries and a salmon fishery in any river or estuary or in the sea:

'River' shall include tributaries and any lake from or through which any river flows:

'Valuation Roll' shall mean the valuation roll in force for the time for any county, and each of the royal burghs therein, made up under the authority of the public general Act seventeenth and eighteenth Victoria, chapter ninety-one, or any other Act relating to the valuation of lands and heritages in Scotland which may be in force for the time.

3. *Commencement of Act.*—The enactments and provisions of this Act with respect to the appointment, powers, and duties of the commissioners, and the election, powers, and duties of District Boards, shall come into operation and take effect from and after the passing of this Act, and all the other enactments and provisions of this Act shall come into operation and take effect from and after the first day of January one thousand eight hundred and sixty-three.

4. *Each River and Estuary, and the Seacoasts adjoining, to be a District.*—Each river in Scotland flowing into the sea, and every tributary stream or lake flowing into or connected with such river, and the mouth or estuary of such river, and the seacoasts adjoining thereto, divided into such portions as may be fixed and defined by the commissioners under the authority of this Act, shall form a district for the purposes of this Act.

5. *Commissioners to be appointed by Secretary of State.*—It shall be lawful for the Secretary of State to appoint three commissioners for the purposes of this Act, who shall be paid at such rate, not exceeding £3 per day each, as the Commissioners of the Treasury may direct, the whole amount to be received by each commissioner not exceeding £350 per annum, over and above such travelling expenses as the Commissioners of the Treasury may sanction: Provided that the duration of the office of such commissioners shall in no case extend beyond three years.

6. *Duties of Commissioners.*—The commissioners shall have the powers and perform the duties hereinafter specified; that is to say,

(1.) To fix and define, for the purposes of this Act and the other Acts relating to salmon and salmon fisheries in Scotland, the natural limits which divide each river in Scotland (including the estuary thereof) from the sea, in so far as the same may not be already fixed by statute or by judicial decision:

(2.) To fix, for the purposes of this Act, the limits of the Solway

Firth, having regard to an Act passed in the forty-fourth year of the reign of his Majesty King George the Third, chapter forty-five:

(3.) To fix, for the purposes of this Act, the limits of every district, and the portions of the seacoast adjoining to the mouth or estuary of any river to be included in such district.

(4.) To fix, for the purposes of this Act, a point on each river (including the estuary thereof) below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors:

(5.) To determine, subject to the provisions of this Act, at what dates the annual close time for every district shall commence and terminate, and at what periods subsequent to the commencement and prior to the termination of the annual close time it shall be lawful to fish for and take salmon with the rod and line: provided that the number of days during which such annual close time shall continue shall be the same as regards every district.

(6.) To make general regulations with respect to the following matters; viz.,

The due observance of the weekly close time:

The construction and use of cruives:

The construction and alteration of milldams, or lades, or water-wheels, so as to afford a reasonable means for the passage of salmon:

The meshes of nets (so that they shall not intercept smolts or salmon fry):

Obstructions in rivers or estuaries to the passage of salmon:

Provided that such regulations shall not interfere with any rights held at the time of the passing of this Act under royal grant or charter, or possessed for time immemorial.

7. *Annual and Weekly Close Time.*—The annual close time for every district shall continue for one hundred and sixty-eight days; and the weekly close time, except for rod and line, shall continue from the hour of six of the clock on Saturday night to the hour of six of the clock on Monday morning; but the commissioners shall have power, on the application of the District Board, or of any two proprietors of fisheries in any district, to vary the period at which the weekly close time shall commence in any district, or any part thereof, in so far as they may think reasonable or expedient: provided that such weekly close time shall in no case be less than thirty-six hours.

8. *Application of Annual Close Time.*—The annual close time shall be applicable to every mode of fishing for or taking salmon in any river, lake, or estuary, or in the sea, except by means of the rod and line for the periods in each district to be fixed by the commissioners subsequent to the commencement and prior to the termination of the annual close time during which it shall be lawful to fish for and take salmon by means of the rod and line.

9. *Present Annual Close Times to subsist until altered under this*

Act.—In regard to any river and estuary which are regulated by any local Act relating thereto the annual close time fixed by such Act, and in regard to all other rivers, estuaries, and seacoasts in Scotland the annual close time fixed by the Public General Act, 9 George the Fourth, c. 39, shall respectively be applicable until the annual close time with respect to any such river, estuary, or seacoast shall be otherwise determined by any bye-law made by the commissioners under the authority of this Act.

10. *Fishing illegal where prohibited by existing Acts.*—It shall not be lawful to fish for or take salmon at any place or by any mode prohibited by any statute relating to salmon or salmon fisheries in Scotland subsisting and in force at the date of the passing of this Act; and nothing contained in this Act or in any bye-law made by the commissioners shall render legal any mode of fishing which was or would have been illegal at the date of the passing of this Act.

11. *Penalties for Offences.*—Every person who commits any of the following offences shall for every such offence be liable to a penalty not exceeding £5, and to a further penalty not exceeding £2, for every salmon taken or killed contrary to the provisions of this Act, or of any bye-law made by the commissioners under the authority of this Act; and shall, in addition to such penalties, at the discretion of the magistrate, forfeit every boat, net, rod, line, or other article which has been or may be used in fishing for or taking salmon, and which is found in the possession of such person at the time of the committing such offence; that is to say,

Every person who fishes for or takes salmon during the annual close time by any means other than the rod and line:

Every person who fishes for or takes salmon, except during Saturday or Monday, by rod and line, during the weekly close time, or acts in breach or contravention of any bye-law made by the commissioners in regard thereto:

Every person who fishes for or takes salmon during the annual close time by means of the rod and line at a period not sanctioned by the commissioners:

Every person who fishes for salmon with a net having a mesh contrary to any bye-law of the commissioners:

Every person who obstructs or impedes the passage of salmon contrary to any bye-law of the commissioners:

Every person who sells or exposes for sale fresh salmon taken within the limits of this Act during the period between the commencement of the latest and the termination of the earliest annual close time which may have been fixed for any district; but the burden of proving that salmon so sold or exposed by any person for sale have been caught beyond the limits of this Act shall lie on the person selling or exposing the same for sale:

Every person who takes or has in his possession any foul or unseasonable salmon:

Every person who uses or has in his possession any light for the purpose and with the intention of taking salmon:

Every person who sets a net or any other engine for capture of salmon when the fish show themselves when leaping at or trying to ascend any fall or other impediment:

Every person who wilfully takes or destroys or injures or obstructs the passage of the young of salmon, or disturbs any spawning bed, or any bank or shallow on which the spawn of salmon may be deposited; but this provision shall not apply to Acts done for the purpose of the artificial propagation of salmon or for other scientific purposes, or in the course of the exercise of rights of property in the bed of any stream: provided also, that the District Board may, with the consent of all the proprietors of salmon fisheries in any river or estuary, adopt such means as they think fit for preventing the ingress of salmon into narrow streams or tributaries in which they or the spawning beds are, from the nature of the channel, liable to be destroyed, but always so that no water rights used or enjoyed for the purposes of manufactures or agricultural purposes or drainage, shall be interfered with thereby.

12. *Penalty for using or possessing Salmon Roe.*—Every person who uses salmon roe for the purpose of fishing, or has in his possession any salmon roe for sale or for the purpose of fishing, shall for every such offence be liable to a penalty not exceeding £2, and shall forfeit any salmon roe found in his possession.

13. *Penalty for causing or allowing Poisonous Substances to flow into Rivers.*—Every person who causes or knowingly permits to flow, or puts or knowingly permits to be put, into any river containing salmon, any liquid or solid matter poisonous or deleterious to salmon, or who shall discharge into any river sawdust to an extent injurious to any salmon fishery, shall be liable to the following penalties; (that is to say),

For the first offence a penalty not exceeding £5:

For the second offence a penalty not exceeding £10, and a further penalty not exceeding £2 for every day during which such offence is continued:

For the third or any subsequent offence a penalty not exceeding £20, and a further penalty not exceeding £5, for every day during which such offence is continued:

But no person shall be subject to the foregoing penalties for any act done in the exercise of any right to which he is by law entitled, if he prove to the satisfaction of the Court before whom he is tried that he has used the best practicable means, within a reasonable cost, to dispose of or render harmless the liquid or solid matter so permitted to flow or to be put into waters; but nothing herein contained shall prevent any person from acquiring a legal right in cases where he would have acquired it if this Act had not passed, or exempt any person from any punishment to which he would otherwise be subject, or legalise any act or default that would but for this Act be contrary to law.

14. *Commissioners to visit and report on Rivers and Estuaries.*—The commissioners shall visit and report on the several rivers and

estuaries and salmon fisheries in Scotland, after notice duly given by special advertisement in some newspaper of general circulation in the district, not less than ten days before any such visitation, to the proprietors of salmon fishings on each of such rivers or estuaries, of their intention so to visit and report.

15. *Commissioners to make Bye-laws on Matters specified in Third and Fourth Subdivisions of Sixth Section of this Act.*—The commissioners shall, on or before the first day of January one thousand eight hundred and sixty-three, fix and determine by bye-laws the matters specified in the third and fourth subdivisions of the sixth section of this Act; and a copy of such bye-laws applicable to each district shall be, prior to the said date, transmitted by post to the sheriff-clerk of each county, in so far as the same may relate to a district or part of a district situate therein; and the sheriff-clerk shall, on receipt of such copy, give notice of such bye-laws by advertisement inserted once for each of two successive weeks in some newspaper published in such county, or, if no newspaper be published therein, in some newspaper published in a county adjoining thereto; and every person whose interests may be affected by any such bye-laws may state to the Secretary of State any objections to any such bye-law; and the Secretary of State shall, after one month after the date of such bye-laws, approve or alter or disapprove of the same; and every such bye-law, when approved of or altered by the Secretary of State, shall be published in the 'Edinburgh Gazette,' and in such further mode as the Secretary of State may direct, and on being so published shall be legal and binding on all concerned: provided that in the case of such districts in which by reason of their inconsiderable size it may seem to the commissioners unnecessary to determine such matters, they may defer doing so until required by more than six proprietors of fisheries within the same, after the limits of such district have been defined, as hereinafter provided, and shall proceed, in other respects, as above provided.

16. *Commissioners to make Bye-laws on the other matters specified in Sixth Section.*—The commissioners shall, on or before the first day of January one thousand eight hundred and sixty-four, determine the other matters specified in the sixth section of this Act, by bye-laws under their hands, or the hand of any two of them, and shall report the same to the Secretary of State; provided that previously to making such bye-laws they shall communicate the same to the District Board, and afford the Board any reasonable opportunity of making any representation to the commissioners respecting the same; and a copy of such bye-laws shall be transmitted to the sheriff-clerk of each county, in so far as the same may relate to any district situated therein; and the sheriff-clerk shall, on the receipt of such copy, give notice of such bye-laws by advertisement inserted once for each of two successive weeks in some newspaper published in such county, or, if no newspaper be published therein, in some newspaper published in a county adjoining thereto; and every person whose interests may be affected by any such bye-laws may state to the Secretary of State any objec-

tions to any such bye-law; and the Secretary of State shall, after two months and within four months after the date of such bye-laws, approve or alter or disapprove of the same; and every such bye-law, when approved of or altered by the Secretary of State, shall be published in the 'Edinburgh Gazette,' and in such further mode as the Secretary of State may direct, and on being so published shall be legal and binding on all concerned.

17. *As to Evidence to be taken by Commissioners.*—The commissioners, in execution of this Act, shall take such evidence as they may find to be necessary, and in the event of witnesses refusing to attend and give evidence, or to allow access to documents, they may apply to the sheriff of the county for a warrant to cite witnesses and havers, and the sheriff is hereby authorised to grant the same.

18. *As to the Election of District Boards.*—Within three months after any bye-law constituting the district shall have been published the sheriff shall direct the sheriff-clerk to make up a roll of the upper proprietors and also a roll of the lower proprietors in each district; and the qualification of an upper proprietor shall be the property of a fishery entered in the valuation roll as of the yearly rent or yearly value of twenty pounds or upwards, or, if such fishery be not valued on the valuation roll, of half a mile of frontage to the river, with a right of salmon fishing, and the qualification of a lower proprietor shall be the property of a fishery entered in the valuation roll as of the yearly rent or yearly value of twenty pounds or upwards; and the sheriff shall have power to decide summarily any question arising on any claim to such qualification; and the sheriff shall thereafter direct the sheriff-clerk to call a meeting of the upper proprietors, and also a meeting of the lower proprietors, at such times and places as he shall direct; and notice of such meeting shall be given as hereinbefore provided with respect to the publication of bye-laws made by the commissioners; and the upper proprietors and lower proprietors present at such separate meetings respectively shall elect not more than three of their number to be members of the District Board, every proprietor of a fishery valued at more than five hundred pounds on the valuation roll having two votes at such election, and an additional vote for every five hundred pounds of rental, but not more than four votes in all; and the members so elected with the proprietor having the largest amount entered in the valuation roll as the yearly rent or yearly value of fisheries in such district shall constitute the District Board; and the last-mentioned proprietor shall be the chairman of the Board, and have a deliberative as well as a casting vote; and the election of such Board shall be notified by the chairman of such respective meetings to the sheriff-clerk within seven days from the date of the same, *and the sheriff shall thereafter summon the first meeting of such Board for such day and such place as he may fix:* Provided always, that if any river be situate in two or more counties, the notices above provided shall be given and such meetings shall be called in such manner as the sheriffs of such counties jointly shall direct.

19. *Constitution of the Board where Proprietors are less in Num-*

ber than Three.—Their Votes.—If in any district the upper proprietors or the lower proprietors shall be fewer in number than three, the Board shall consist of an equal number, elected as aforesaid, along with the proprietor having the largest valuation, who shall also be chairman of the Board, as above provided : and if such last-mentioned proprietor be the sole upper or the sole lower proprietor, he shall have two votes on the Board ; and if there shall be only one proprietor in any district such proprietor shall have and may exercise all the powers by this Act conferred on the District Board.

20. *Mandatories may be appointed.*—It shall be lawful for the Commissioners of Her Majesty's Woods, Forests, and Land Revenues, or either of them, in cases where Her Majesty in right of her crown is proprietor of any fishery, and for any corporation or company, being the proprietors of any fishery, or for any proprietor of a fishery, respectively, from time to time to nominate and appoint, by any writing under his or their hand or seal, any person as the mandatory of such commissioners, corporation, company, or proprietor to attend, act, and vote at any meeting of proprietors under this Act ; and every such nomination and appointment shall subsist until recalled by the said commissioners or either of them, or by the corporation or company or proprietor making the same.

21. *Payment to Sheriff-Clerk in connection with Elections.*—All expenses incurred by the sheriff-clerk in making up the roll of proprietors, and in calling and attending the meetings for the election of the District Board, with such reasonable remuneration for his time and trouble as shall be fixed by the sheriff, shall be paid to the sheriff-clerk by the District Board out of the assessments to be levied under the authority of this Act.

22. *Powers and Duties of District Boards.*—The District Board may sue or be sued in the name of their clerk, and if there be more than six members three members shall form a quorum, and if there be fewer than six members two shall form a quorum, and they shall keep regular books and accounts, and shall hold their first meeting within ten days after the first election under this Act at a time and place to be fixed at the meetings of proprietors at which such election took place, or in cases where such election is not necessary the first meeting shall take place at a time to be fixed by a majority of the proprietors, and notice of such meeting shall be given as hereinbefore provided with respect to the publication of bye-laws to be made by the commissioners, and the District Board shall have power, subject to the provisions of this Act and the bye-laws made by the commissioners, to make and alter from time to time regulations for the preservation of the fisheries in the district, and from time to time to appoint a clerk, and such number of constables, water-bailiffs, watchers, and other officers as they think fit, to fix and prescribe the duties of all persons appointed by them, and to remove such persons, and appoint other persons in their stead ; and they may combine with any other District Board for the purpose of this Act, and to maintain a common staff of officers for the protection and preservation of the fisheries of more than one district, and

may agree with the police committee of any county for the purpose of paying additional constables for the better protection of the fisheries in their district: Provided that all such regulations shall, before taking effect, be reported to and approved by the Secretary of State, and shall not interfere with any vested right of property, and shall not authorise any encroachment or trespass on private property.

23. *Assessments may be imposed by District Boards.*—The District Board shall have power to impose an assessment for the purposes of this Act, to be called the fishery assessment, on the several fisheries in each district, according to the yearly rent or yearly value of such fisheries as entered in the valuation roll; and every proprietor of a fishery which is not valued on the valuation roll, and who shall claim right to vote in the election of members of the District Board, shall be held to be a proprietor of a fishery of the value of twenty pounds, and shall be assessed accordingly; and such fishery assessments may be imposed, collected, and recovered by the District Board in the same manner as police assessments may be imposed, collected, and recovered by the commissioners of supply under the authority of the Public General Act, twentieth and twenty-first Victoria, chapter seventy-two; and for the purpose of imposing, collecting, and recovering such fishery assessments the District Boards shall have and may exercise all the powers conferred by the said Act on commissioners of supply for imposing, collecting, and recovering the assessments leviable under the same.

24. *As to future Elections of District Boards.*—Each District Board shall continue in office for three years, and members thereof shall be eligible for re-election, and vacancies occurring during such period shall be filled up by the Board until the next meeting of proprietors, who shall then fill up the same; and meetings of the upper and lower proprietors respectively for the purpose of each triennial election of not more than three upper proprietors and three lower proprietors respectively shall be called by the clerk, who shall give notice of such meetings by advertisement as hereinbefore provided with respect to the publication of bye-laws made by the commissioners; and such meetings shall at the same time take such steps as they shall think proper for auditing and attesting the accounts of the District Board for the preceding three years.

25. *Penalties for Breach of Bye-laws and Regulations.*—It shall be lawful for the District Board, by any bye-law or regulation to be made by them and approved of by the Secretary of State as hereinbefore provided, to enact that any person committing any breach or contravention of such bye-law or regulation shall be liable for every such offence to a penalty not exceeding £2; and such penalty may be sued for and recovered in the same manner as penalties incurred and imposed under the provisions of this Act.

26. *Forfeited Articles may be seized.*—Any net, rod, line, or other article directed to be forfeited under this Act may be seized by any constable, water bailiff, watcher, or other officer appointed by the District Board, and the sheriff or justice may either order the same to

be destroyed or to be sold, and the proceeds of such sale to be paid to the clerk on behalf of the District Board.

27. *Three or more persons illegally fishing at night to be guilty of a Criminal Offence.*—If three or more persons acting in concert, or being together or in company, shall at any time between the expiration of the first hour after sunset on any day and the beginning of the last hour before sunrise on the following morning enter or be found upon any ground adjacent or near to any river or estuary or the sea, or in or upon any river or estuary or the sea, with intent illegally to take or kill salmon, or having in his or their possession any net, rod, spear, light, or other instrument used for taking salmon with such intent as aforesaid, or shall illegally take or kill, or attempt to take or kill, or aid or assist in killing or taking salmon, every such person shall be guilty in Scotland of a criminal offence, and in England within the limits of the 'Tweed Fisheries Amendment Act,' of a misdemeanour, and shall for every such offence be liable to a fine not exceeding £5, or to imprisonment for any period not exceeding three months, as the sheriff or justices before whom such persons or any of them are tried and convicted may determine; and if such fine be not paid immediately on conviction, the offender so failing to pay shall be sentenced to imprisonment for such period, not exceeding three months, as the sheriff or justices may adjudge, unless such fine shall be sooner paid.

28. *Prosecution for Offences under this Act and Recovery of Penalties.*—All offences under this Act may be prosecuted and all penalties incurred under this Act may be recovered before any sheriff or any two justices acting together and having jurisdiction in the place where the offence was committed, at the instance of the clerk of any District Board or of any other person; and it shall be lawful for the sheriff or justices to whom any petition or complaint is presented to proceed in a summary form, and to grant warrant for bringing the persons complained against before him or them, and on proof on oath by one or more credible witness or witnesses or confession of the person accused, or other legal evidence, forthwith to determine and give judgment in such complaint, without any written pleadings or record of evidence, other than a record of the charge and of the judgment pronounced thereon and to grant warrant for the recovery of all penalties and expenses decerned for, by poinding, and imprisonment for any period not exceeding six months; and any person who shall think himself aggrieved by any judgment of the sheriff or justices pronounced in any complaint or prosecution under this Act may appeal to the Court of Justiciary at their next Circuit Court, or where there is no Circuit Court to the High Court of Justiciary at Edinburgh, in the manner and under the rules, limitations, conditions, and restrictions contained in the Act passed in the twentieth year of the reign of His Majesty King George the Second, chapter forty-three, for taking away and abolishing heritable jurisdiction in Scotland, with this variation, that such person shall, in place of finding caution in the terms prescribed by the said Act, be bound to find caution to pay the penalty and expenses awarded against him by the judgment ap-

pealed from, in the event of such appeal being dismissed, together with any additional expenses that shall be awarded by the Circuit Court or Court of Justiciary on dismissing such appeal; and it shall not be competent to appeal from or bring the judgments of any sheriff or justices acting under this Act under review by advocation or in any other way than as herein provided.

29. *Enforcement of Regulations and Bye-laws.*—In the event of any person refusing or neglecting to obey any bye-law made by the commissioners, or any regulation made by the District Board, the clerk may apply to the sheriff by summary petition in ordinary form, praying to have such person ordained to obey the same, and the sheriff shall take such proceedings and make such orders thereupon as he shall think just.

30. *Expenses may be decerned for.*—In giving judgment on any application or complaint under this Act the sheriff or justices may find the person complained against liable in expenses, and may decern for payment of the same.

31. *Recovery of Penalties and Expenses.*—All penalties and expenses incurred under this Act, or under any bye-law or regulation made under the authority thereof, may be recovered by ordinary action or in the small debt court of the sheriff.

32. *Payment and Application of Penalties.*—The penalties incurred under this Act shall in all prosecutions at the instance of the clerk of any District Board be payable to and recoverable by such clerk, and shall in all other cases be paid and applied in such manner as the sheriff or justices may direct; and all penalties and expenses received by the clerk, and the proceeds of the sale of any articles seized and directed to be sold as before provided, shall be applied by the District Board towards defraying the expenses incurred by them in carrying into execution the provisions of this Act.

33. *Certain Provisions of* 24 *&* 25 *Vict. c.* 109, *applied to Solway Firth.*—From and after the first day of January one thousand eight hundred and sixty-five the provisions of the said Act, intituled, 'An Act to amend the Laws relating to Fisheries of Salmon in England,' shall extend and apply to salmon fisheries in the waters and on the shores of the Solway Firth situate in Scotland, as the same may be fixed by authority of this Act, and to the rivers flowing into the same, in so far as such provisions relate to the use of fixed engines for the taking of salmon: provided that all offences against such provisions shall be prosecuted and punished as directed by this Act.

34. *This Act not to apply to the River Tweed.*—No part of this Act, with the exception of the tenth, twelfth, and twenty-seventh clauses, shall apply to the river Tweed, or to any fisheries in the said river or the mouth or entrance thereof, as defined by 'The Tweed 'Fisheries Amendment Act 1859;' and any penalties incurred under the said tenth, twelfth, and twenty-seventh clauses of this Act shall, so far as concerns the river Tweed, be recoverable in manner prescribed by 'The Tweed Fisheries Amendment Act 1857,' which Act, and

the 'Tweed Fisheries Amendment Act 1859,' shall remain in full force and effect, anything herein contained to the contrary notwithstanding.

SALMON FISHERIES (SCOTLAND) CONTINUANCE.

26 & 27 Vict. c. 50.

An Act to continue the Powers of the Commissioners under the Salmon Fisheries (Scotland) Act until the First Day of January one thousand eight hundred and sixty-five, and to amend the said Act.—[13*th July* 1863.]

25 *&* 26 *Vict. c.* 97.—Whereas an Act was passed in the twenty-fifth and twenty-sixth years of the reign of Her present Majesty, intituled 'An Act to regulate and amend the law respecting the Salmon 'Fisheries of Scotland;' and in the sixteenth section thereof it is enacted, that 'the Commissioners shall on or before the first day of January 'one thousand eight hundred and sixty-four' determine certain matters by bye-laws, and report the same to the Secretary of State; and it is expedient that the time so limited should be extended, and that the said Act should be amended: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. *Extension of Time for making, etc., Bye-laws.*—The said commissioners shall determine the said matters specified in the said sixteenth section, by bye-laws under their hands or the hands of any two of them, and shall report the same to the Secretary of State on or before the first day of January one thousand eight hundred and sixty-five.

2. *Notice to be given for calling First Meeting of District Boards.*—The provision in the eighteenth section of the recited Act that 'the 'sheriff shall thereafter summon the first meeting of such Board for 'such day and such place as he may fix' is hereby repealed; and on the time and place of the first meeting of the District Board being fixed as provided by the twenty-second section of the recited Act, and intimated to the sheriff-clerk, he shall give notice of such meeting as therein provided; and such first meeting may be held at any time within twenty-one days after the first election of the District Board under the recited Act, anything therein contained to the contrary notwithstanding.

3. *As to reading of Sect.* 33 *of recited Act.*—The thirty-third section of the recited Act shall be read and construed as if the words 'Public General Act, Twenty-fourth and Twenty-fifth Victoria, Chap-'ter One hundred and nine,' had been inserted therein instead of the words 'said Act.'

4. *Power to Commissioners to Extend the Limits of the mouth of the river Tweed—As to Application of certain Rates or Assessments.*—It shall be lawful for the said commissioners, on or before the first day of January one thousand eight hundred and sixty-four, by a bye-law under their hands, or the hands of any two of them, to be made, published, and approved in the manner provided in the fifteenth section of the recited Act, to extend the limits of the mouth or entrance of the river Tweed northwards from the limits thereof as defined in 'The Tweed Fisheries Amendment Act 1859,' along the sea coast and into the sea to such points and to such extent as they may fix; and from and after the publication of such bye-law in the 'Edinburgh 'Gazette,' and in such further mode as the Secretary of State may direct, the enactments and provisions of 'The Tweed Fisheries Act '1857' (with the exception of the fifty-fifth and sixtieth sections), and of 'The Tweed Fisheries Amendment Act 1859,' and the tenth, twelfth, and twenty-seventh sections of the recited Act, shall be applicable to and may be enforced within such extended limits in the same manner and to the same effect as if such extended limits had been included in the mouth or entrance of the river Tweed as defined in 'The Tweed Fisheries Amendment Act 1859:' provided, that the rates or assessments to be levied on and in respect of the fisheries beyond the limits of the mouth of the river Tweed, as defined in 'The Tweed Fisheries Amendment Act 1859,' and within the limits as extended under any such bye-law as aforesaid, shall not be applied in or towards the payment or discharge of any debts or obligations contracted by the commissioners acting under 'The Tweed Fisheries 'Act 1857,' previous to the passing of this Act.

SALMON FISHERIES (SCOTLAND) AMENDMENT.

27 & 28 Vict. c. 118.

An Act to amend the Acts relating to Salmon Fisheries in Scotland.—[29*th July* 1864.]

25 *& 26 Vict. c.* 97—26 *& 27 Vict. c.* 50.—Whereas an Act was passed in the twenty-fifth and twenty-sixth years of the reign of Her Majesty Queen Victoria, intituled 'An Act to regulate and amend the 'Law respecting the Salmon Fisheries of Scotland;' and another Act was passed in the twenty-sixth and twenty-seventh years of the reign of Her Majesty Queen Victoria, intituled 'An Act to continue the 'Powers of the Commissioners under the Salmon Fisheries (Scotland) 'Act until the First Day of January one thousand eight hundred and 'sixty-five, and to amend the said Act:' and whereas by the first recited Act provision was made for determining by bye-laws certain matters on or before the first day of January one thousand eight hun-

dred and sixty-three, and certain other matters on or before the first day of January one thousand eight hundred and sixty-four, and for reporting the same to the Secretary of State ; and by the second recited Act the time for determining and reporting on certain of such matters was continued till the first day of January one thousand eight hundred and sixty-five ; and it is expedient that the times so limited should be extended, and that the said two recited Acts should be amended : Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. *Time for making certain Bye-laws extended.*—The said commissioners shall and may, on or before the first day of January one thousand eight hundred and sixty-six, determine the matters specified and referred to in the sixth, fifteenth, and sixteenth sections of the first recited Act, and the first section of the second recited Act, respectively, by bye-laws under their hands or the hands of any two of them, in manner prescribed by the first recited Act, and the whole enactments and provisions of the first recited Act with respect to the transmission, publication, and confirmation of bye-laws shall be applicable to the bye-laws to be made by the said commissioners during the period above specified.

2. *Power to Secretary of State to Confirm Bye-laws.*—It shall be lawful for the Home Secretary to confirm any bye-laws made under the provisions of the recited Acts, notwithstanding the period therein prescribed for such confirmation may have elapsed at any period prior to the first day of January, one thousand eight hundred and sixty-five.

3. *In Cases where District Boards have not been constituted Commissioners, on Requisition, may re-issue a Bye-law.*—In any case where a District Board has not been constituted, under the provisions of the first recited Act, previous to the passing of this Act the commissioners may, on the requisition of any proprietor of salmon fisheries within such district, re-issue a bye-law constituting the district ; and the commissioners, sheriff, and sheriff-clerk shall thereupon take all the proceedings prescribed by the first recited Act, with respect to the formation of District Boards ; and such Boards, when so formed, shall have all the powers and authorities conferred on or competent to any District Board under the recited Acts or either of them.

4. *Provision where no District Board has been formed.*—And whereas by the sixteenth section of the first recited Act it is provided, that, previously to making bye-laws, the commissioners shall communicate the same to the District Board, and afford the Board reasonable opportunity of making any representation to the commissioners regarding the same : be it enacted, that the commissioners may, in all cases in which no District Board has been formed, make bye-laws in regard to the whole matters and things specified and referred to in the sixth and sixteenth sections of the first recited Act ; and, on compliance with the whole other provisions of the said sixteenth section, the Secretary of State may approve, alter, or disapprove of such bye-laws, and the

same, as altered or approved of by him, shall be as legal and binding on all concerned as if they had been previously communicated to a District Board.

5. *This and recited Acts to be one.*—This Act shall be read and construed along with the recited Acts as if the same formed one Act.

SALMON EXPORTATION 1863.

26 Vict. c. 10.

An Act for prohibiting the Exportation of Salmon at certain Times.—[20*th April* 1863.]

24 & 25 *Vict. c.* 109—25 & 26 *Vict. c.* 97—22 & 23 *Vict. c. lxx.* —Whereas the sale of salmon within the United Kingdom is prohibited at various times; that is to say, if caught in England within the limits of the Salmon Fishery Act 1861, is prohibited between the third day of September and the second day of February; if caught in any fishery district in Ireland is prohibited during such time as the capture of salmon is prohibited in that district; if caught in Scotland within the limits of 'The Salmon Fisheries (Scotland) Act 1862,' is prohibited between the commencement of the latest and the termination of the earliest annual close time fixed for any district; if caught in the river Tweed, as defined by 'The Tweed Fisheries Amendment 'Act 1859,' is prohibited between the fourteenth day of September and the fifteenth day of February: and whereas the capture or possession of foul or unseasonable salmon within the limits of the United Kingdom is prohibited at all times: and whereas the provisions of the said Acts are evaded by the exportation for sale in France and other foreign countries of salmon that cannot legally be sold within the limits of the United Kingdom: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. *Short Title.*—This Act may be cited for all purposes as 'The 'Salmon Acts Amendment Act 1863.'

2. '*Parts beyond Seas*' *defined.*—No part of the United Kingdom, however situated with regard to any other part, shall be deemed for the purposes of this Act to be parts beyond seas.

3. *Export of unclean or unseasonable Salmon, or Salmon caught at certain times, prohibited.*—No unclean or unseasonable salmon, and no salmon caught during the time at which the sale of salmon is prohibited in the district where it is caught, shall be exported or entered for exportation from any part of the United Kingdom to parts beyond seas.

All salmon exported or entered for exportation in contravention of this section shall be forfeited, and the person exporting or entering

the same for exportation shall be subject to a penalty not exceeding five pounds in respect of each salmon so exported or entered for exportation.

The burden of proving that any salmon entered for exportation from any part of the United Kingdom to parts beyond seas between the third day of September and the second day of February following is not so entered in contravention of this Act shall lie on the person entering the same for exportation.

4. *Recovery of Penalties.*—All penalties under this Act may be recovered in England, except within the limits of the said Tweed Fisheries Act, as penalties under the Salmon Fishery Act 1861 ; in Ireland as penalties under the Act passed in the session of the fifth and sixth years of the reign of Her present Majesty, chapter one hundred and six, intituled an Act to regulate the Irish fisheries in Scotland, except within the limits of the said Tweed Fisheries Act, as penalties under the Salmon Fisheries (Scotland) Act 1862 ; and within the limits of the said Tweed Fisheries Act, in manner prescribed by 'The Tweed Fisheries Act 1857.'

BYE-LAWS UNDER SALMON FISHERIES (SCOTLAND) ACTS.

(A.)

Bye-law.

25 & 26 Vict. c. 97.
26 & 27 Vict. c. 50.
27 & 28 Vict. c. 118.

'Acts to regulate and amend the Law respecting the Salmon Fisheries of Scotland.'

WE, the Commissioners appointed under the said Acts, and empowered thereby 'to fix for the purposes of this [the first recited] 'Act the limits of every district, and the portions of the sea coast 'adjoining to the mouth or estuary of any river to be included in such 'district'—and 'to fix for the purposes of this [the first recited] Act a point on 'each river (including the estuary thereof) below which the 'proprietors of fisheries shall be lower proprietors, and above which 'the proprietors of fisheries shall be upper proprietors'—do hereby fix 'and determine—

1st. That the limits of the district of the river Add shall be—on the north, Craignish point ; on the south, Knap point ; and that the district shall consist of the portions of the sea coast

and the estuary, and the river contained between the said points.

2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be 600 yards below the junction of the burn which runs by Dreamore steading, known as Ruddell burn; the distance to be measured along the course of the Add river.

Given under our hands, this 24th day of December 1862.

WM. J. FFENNELL,
FRED. EDEN,
JAMES LESLIE,
} *Commissioners.*

Fisheries Department, Home Office.

Approved,
G. GREY.

Whitehall, 30 January 1863.

(This bye-law to take effect from the 10th day of February 1863.)

The same bye-law shall apply to the several districts, according to the limits thereof, and take effect from the dates under mentioned, respectively.

Names of Rivers.	*Limits of District and Division between Upper and Lower Proprietors.*	*Date from which Bye-law to take effect.*
ALINE . . .	1st. That the limits of the district of the river Aline shall be—on the west, the east end of Fuenary Island; on the east, Barony point; and that the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be the bridge at the castle.	10th Feb. 1863.
ALNESS . . .	1st. That the limits of the district of the river Alness shall be —a line drawn south from the left bank of the mouth of the Aultgraad river to the centre of the firth at high water, and along the centre of the firth as far as Invergordon ferry, and continued thence by a straight line to the ferry landing-place at Majick point; and that the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points.	10th Feb. 1863.

Names of Rivers.	*Limits of District and Division between Upper and Lower Proprietors.*	*Date from which Bye-law to take effect.*
ALNESS—*continued.*	2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be a line drawn from Munro of Novar's ice house on the west bank of the river to Dalmore distillery chimney on the east side of the river.	
ANNAN . . .	1st. That the limits of the district of the river Annan shall be—on the west, a line drawn due south (true) from the easternmost end of East Park farm, Sea Bank; on the east, the west bank or side of the water Sark; and that the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be the dyke or mill dam immediately below the bridge of the public road from Dumfries to Annan.	10th Feb. 1863.
APPLECROSS . .	1st. That the limits of the district of the river Applecross shall be—on the north, Ru-na-Uag point, at or near the mouth of loch Torridon; on the south, Skier Vore point; and that the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be a line drawn from the east gable of the manse on the right side of the river Applecross to the corner next the sea of the dyke slit on the left bank enclosing Fuilein Park.	10th Feb. 1863.
ARNISDALE (*in Loch Hourn*) . . .	1st. That the limits of the district of the river Arnisdale (in Loch Hourn) shall be—on the north, a line drawn due east from the north end of Sandag Island; on the south, Aird-na Slishnich point; and that the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower pro-	10th Feb. 1863.

Names of Rivers.	*Limits of District and Division between Upper and Lower Proprietors.*	*Date from which Bye-law to take effect.*
ARNISDALE (*in Loch Hourn*)—*continued.*	prietors, and above which the proprietors of fisheries shall be upper proprietors, shall be the stepping stones 70 yards above the foot bridge at Cromarty village.	
AWE	1st. That the limits of the district of the river Awe shall be—on the north point, Appin ferry, including the east shore of Lismore Island; on the south, Craignish point, excepting Loch Crinan, the loch to be defined by a line drawn from the southernmost point of the mainland immediately north of Enska Island, and continued along the outer face of that island to the projecting point of the mainland nearest to the south-west point of the said island, and excepting the portions of the sea coast and estuary, and river contained between Minard point and the bridge from the mainland over Siel Sound to Siel Island; the Awe district to include all the islands within the said limits south of Lismore Island, east of the Island of Mull and north of Jura; and that the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be a line drawn at right angles with and across the river from the ice house immediately above the house in the occupation of Mr David Baird, at present tacksman of the Awe fishings.	10th Feb. 1863.
AYLORT (*Kinloch*) .	1st. That the limits of the district of the river Aylort (Kinloch) shall be—on the north, Ru-Arasaig; on the south, Rusmersiri; and that the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be the burn on the left bank of the Aylort next below the bridge opposite Kinloch Aylort inn.	10th Feb. 1863.
AYR	1st. That the limits of the district of the	10th Feb. 1863.

Names of Rivers.	*Limits of District and Division between Upper and Lower Proprietors.*	*Date from which Bye-law to take effect.*
AYR—*continued.*	river Ayr shall be—on the north, the lighthouse on the point of Troon harbour; on the south, a line drawn due west from Seafield house; and that the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be the lower dyke or dam at Ayr Mills.	
BALGAY . . .	1st. That the limits of the district of the river Balgay shall be—on the east, the mouth of the burn at Camushole, near the south-east corner of Upper Loch Torridon; on the west, Ru na Uag point, at or near the mouth of Lower Loch Torridon; and that the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be 140 yards below the foot bridge on the path from Shieldag to Torridon.	10th Feb. 1863.
BAA and GLENCOILLEADAR . . .	1st. That the limits of the district of the rivers Baa and Glencoilleadar shall be—Ardmore point at the north-west entrance of the Sound of Mull on the north; Fidden point in the Sound of Iona on the south, including Coll Tiree and other islands lying to the west of the coast between those two points; and that the district shall consist of the portions of the sea coast and the estuary, and the rivers, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be, BAA, ford at saw mill and water wheel on the right bank, being the nearest mill to the mouth of the river; GLENCOILLEADAR, bridge of road from Craignure to Bunessan.	23d May 1865.
BEAULY . . .	1st. That the limits of the district of the river Beauly shall be—a straight line	10th Feb. 1863.

Names of Rivers.	*Limits of District and Division between Upper and Lower Proprietors.*	*Date from which Bye-law to take effect.*
BEAULY—*continued.*	drawn from the north pier to the south pier of Kessock ferry; and that the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be the bridge on the public road from Inverness to Beauly, commonly called Beauly Bridge.	
BADACHRO and KERRY in Gairloch . .	1st. That the limits of the district of the rivers Badachro and Kerry in Gairloch shall be—on the north, Ru Bane; on the south, Ru Ruag; and that the district shall consist of the portions of the sea coast and the estuary, and the rivers, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be, on the river BADACHRO, the rapid 80 yards above the herring store on the left bank of the river; 2d. on the river KERRY, the site of the old foot bridge at the mouth of the river.	9th Oct. 1863.
BLADENOCH . .	1st. That the limits of the district of the river Bladenoch shall be—on the west, Gillespie river; on the east, Bishop's burn; and that the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be 400 yards below the dyke of Bladenoch distillery.	10th Feb. 1863.
BERRIEDALE . .	1st. That the limits of the district of the river Berriedale shall be—on the south, the boundary of the counties of Sutherland and Caithness; and on the north, a line drawn south-east from Dunbeath castle; and that the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points. 2d. That the point below which the pro-	10th Feb. 1863.

Names of Rivers.	*Limits of District and Division between Upper and Lower Proprietors.*	*Date from which Bye-law to take effect.*
BERRIEDALE—*continued.*	prietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be a line drawn from the row of cottages on the beach on the left bank of the river to the fish smoking house on the right bank.	
BERVIE . . .	1st. That the limits of the district of the river Bervie shall be—on the north, the boundary between the parishes of Dunnottar and Kineff; on the south, the boundary between the parishes of Bervie and Benholm; and that the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be the cruive dyke next the mouth of the river.	10th Feb. 1863.
BROOM . . .	1st. That the limits of the district of the river Broom shall be—on the north, the boundary between that portion of the county of Cromarty and of the county of Ross; and on the south, Cailleach Head; and that the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be a line drawn between Loch Broom Kirk on the left bank and the school house on the right bank of the river.	10th Feb. 1863.
BRORA . . .	1st. That the limits of the district of the river Brora shall be—on the south, Strathsteven point; on the north, Crackaig point; and that the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be the bridge on the road from Golspie to Wick.	9th Oct. 1863.

Names of Rivers.	*Limits of District and Division between Upper and Lower Proprietors.*	*Date from which Bye-law to take effect.*
CARRADALE in Cantyre	1st. That the limits of the district of the river Carradale in Cantyre shall be—Skipness point on north; Mull of Cantyre on south, including Davar and Sanda Islands; and that the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be—remains of bridge on old road between Skipness and Campbeltown.	24th Nov. 1865.
CARRON . . .	1st. That the limits of the district of the river Carron shall be—on the north, the Aird; on the south, Kyle Akin ferry; and that the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be a line drawn from the bridge over Beachan water, on the public road from Jeantoun to Dingwall to the west end of Achintee village.	10th Feb. 1863.
CLAY BURN, FINNIS BAY, AVEN-NAN-GEREN, STRATHGAVAT, NORTH LACASTILE, SCALLADALE, and MAWRIG.	1st. That the limits of the district of the rivers Clay Burn, Finnis Bay, Aven-nan-geren, Strathgavat, North Lacastile, Scalladale, and Mawrig shall be—on the south Du Renish, and on the north the boundary between Lewis and Harris, including the island of Scalpa; and that the district shall consist of the portions of the sea coast, and the estuaries and rivers contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be, with regard to the Clay Burn river, the wooden bridge over the river; with regard to the Finnis Bay river, the bridge on the Finnis Bay road; with regard to the Aven-nan-geren river, the bridge on the Cuidenish road; with regard to the Strathgavat river, the rock in the channel of the river reached by spring tides; with regard to North	31st Dec. 1867.

Names of Rivers.	*Limits of District and Division between Upper and Lower Proprietors.*	*Date from which Bye-law to take effect.*
CLAY BURN, FINNIS BAY, etc. — *continued.*	Lacastile river, the bridge over river; with regard to Scalladale and Mawrig rivers, the bridge on road from Stornoway to Tarbert.	
CLYDE and LEVEN .	1st. That the limits of the district of the rivers Clyde and Leven shall be—on the north, Stone point at the north end of Holy Loch; and on the south, Fairlie Head; and that the district shall consist of the portions of the sea coast and the estuary, and the rivers, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be, on the Clyde, the dam or dyke of the Glasgow waterworks, and on the Leven, a line drawn at right angles with the river from the tail lade of Dalkuhirn dyeworks.	10th Feb. 1863.
CONON . . .	1st. That the limits of the district of the river Conon shall be—on the north, Tarbet Ness; on the south West Sutor point, excepting that portion of the north side of the Cromarty Firth contained within a line drawn south from the left bank of the mouth of the Aultgraad river to the centre of the Firth at high water, and along the centre of the Firth as far as Invergordon, and continued thence by a straight line to the ferry landing-place at Majick point; and that the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be the bridge (commonly called Conon Bridge) of the public road from Inverness to Dingwall.	10th Feb. 1863.
CREE . . .	1st. That the limits of the district of the river Cree shall be—on the west, Bishop's burn; on the east, the point south of Mossyard called Ringdow points; and that the district shall consist of the portions of the sea coast and the estuary, and the river contained between the said points.	10th Feb. 1863.

Names of Rivers.	*Limits of District and Division between Upper and Lower Proprietors.*	*Date from which Bye-law to take effect.*
CREE—*continued.*	2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be a line drawn from the castle of Machermore, in the occupation of James Kinna, Esq., on the left bank, to Corvish house, in feu to Mrs M'Kirlie, on the right bank.	
CREED or STORNOWAY and LAXAY.	1st. That the limits of the district of the rivers Creed or Stornoway and Laxay shall be—Chumpan or Tiumpan Head on the north, to boundary between Lewis and Harris on the south; and that the district shall consist of the portions of the sea coast and the estuary, and the rivers, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be—Creed, the fall opposite Sir James Matheson's grotto on the left bank of the river about 80 yards above the place where the high water channel is divided into two by a rocky island; Laxay, rock called Fellow Rock, Man Rock or Cruich-a-dhuinne.	2d May 1865.
CRERAN . . .	1st. That the limits of the district of the river Creran shall be—a line drawn from the southernmost point of the mainland immediately north of Eriska Island, and continued along the outer face of that island to the projecting point of the mainland nearest to the south-west point of the said island; and that the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said estuary. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be the ford a little above Clark's farmhouse of Glasdrum.	2d Dec. 1864.
CROWE and SHIEL (Loch Duich).	1st. That the limits of the district of the rivers Crowe and Shiel shall be—on the north, Eilean Donan castle; on the south, Kyle Rhea ferry; and that the district shall consist of the portions of	10th Feb. 1863.

Names of Rivers.	*Limits of District and Division between Upper and Lower Proprietors.*	*Date from which Bye-law to take effect.*
CROWE and SHIEL (Loch Duich)—*continued.*	sea coast and the estuary, and the rivers, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be, on the Crowe, 450 yards, measured down the course of the Crowe from the bridge over the said river of the public road from Shiel to Dornie ferry; and on the Shiel 200 yards measured down the course of the Shiel from the bridge over the said river of the public road from Kyle Rhea to Dornie ferry.	
DEE (Aberdeenshire)	1st. That the limits of the district of the river Dee (Aberdeenshire) shall be—on the north, the March Stone heretofore placed for the purpose of dividing the coast fishings of the Dee and the Don rivers; and on the south, the boundary between the parishes of Dunnottar and Kineff; and that the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be a line drawn from the boundary between Pot and Ford fishings and the Poldown fishings, to the boundary between the Pot and Ford fishings and the Ruthrieston fishings.	10th Feb. 1863.
DEE (Kirkcudbright)	1st. That the limits of the district of the river Dee (Kirkcudbright) shall be—on the west, a straight line drawn from the summit of Bar Hill to the most northerly point of Barlocco Island, and continued through the isle on the East Aird point; and that the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be a line drawn from the fishing house on the left bank of the river to the north end of Ashton villa, the property of Murray Stewart, Esq., and in feu to James Knoworthy, Esq.	10th Feb. 1863.

Names of Rivers.	*Limits of District and Division between Upper and Lower Proprietors.*	*Date from which Bye-law to take effect.*
DEVERON . . .	1st. That the limits of the district of the river Deveron shall be—on the west, Cowhyth point; on the east, Cairnbulg point; and that the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be the fall immediately below the island below Kickside.	10th Feb. 1863.
DON	1st. That the limits of the district of the river Don shall be—on the north, the northern boundary of the fishings of Menie; and on the south, the march stone heretofore placed for the purpose of dividing the coast fishings of the Dee and Don rivers; and that the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be a line drawn at right angles with the river from the outlet of the tail lade of the mill on the left bank, immediately below Seaton house.	1st May 1863.
DOON . . .	1st. That the limits of the district of the river Doon shall be—on the north, a line drawn due west from Seafield house; on the south, Turnberry Castle point; and that the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be the dyke or mill dam next the mouth of the river.	10th Feb. 1863.
DRUMMACHLAY or GLENMORE, ISLE OF BUTE.	1st. That the limits of the district of the river Drummachlay or Glenmore, island of Bute, shall be the whole coasts of the islands of Bute, Inchmarnoch, Greater and Lesser Cumbraes. 2d. That the point below which the pro-	22d Nov. 1867.

Names of Rivers.	*Limits of District and Division between Upper and Lower Proprietors.*	*Date from which Bye-law to take effect.*
DRUMMACHLAY or GLENMORE, ISLE OF BUTE—*continued*	prietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be the bridge on the public road between Rothesay and Kilmichael.	
DUNBEATH . .	1st. That the limits of the district of the river Dunbeath shall be—on the south, a line drawn south-east from Dunbeath Castle; and on the north, Ulbster Head; and that the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be a point of 120 yards above line to be drawn from the fish smoking house on the right bank to the cross fence dyke opposite to the said fish smoking house, and running at right angles with the river, on the left bank of the said river.	10th Feb. 1863.
ECKAIG . . .	1st. That the limits of the district of the river Eckaig shall be—on the north, Strone point at the north end of Holy Loch; and on the south, Strone point in the Kyles of Bute; and that the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be the bridge on the high road from Dunoon to Kilmun.	10th Feb. 1863.
NORTH ESK . .	1st. That the limits of the district of the river North Esk shall be—on the north, the boundary between the parishes of Bervie and Benholm; on the south, the march between the properties of Montrose and Charlton; and that the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be a line drawn across the ford	1st May 1863.

Names of Rivers.	*Limits of District and Division between Upper and Lower Proprietors.*	*Date from which Bye-law to take effect.*
North Esk—*continued.*	above Fluke Hole, from the east end of the land embankment on the right side of the river, to the pigeon house under Kirkside plantation, on the left side of the river.	
South Esk . .	1st. That the limits of the district of the river South Esk shall be—on the north, the march between the properties of Montrose and of Charlton; on the south, Red Head; and that the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be the Bridge of Dun.	10th Feb. 1863.
Ewe	1st. That the limits of the district of the river Ewe shall be—on the north, Greenstone point; on the south, Ru Bane, opposite the north end of Longa Island; and that the districts shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be the bridge of the public road from Aultbea to Pool Ewe.	10th Feb. 1863.
Fincastle, Meaveg, Ballanachist, South Lacastile, Borve, and Obb (Harris).	1st. That the limits of the district of the rivers Fincastle, Meaveg, Ballanachist, South Lacastile, Borve, and Obb, on the west coast of Harris, shall be—on the north, the most northerly point of the island of Scarpa, thence along the west and south coast of that island, and by the shortest line to the mainland of Harris; and on the south Ru Renish, including the islands of Taransay, Ensay, and Killegray; and that the district shall consist of the portions of the sea coast and the estuaries and rivers contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be—with regard to the Fincastle river, the top of the sea pool at high	31st Dec. 1867.

Names of Rivers.	*Limits of District and Division between Upper and Lower Proprietors.*	*Date from which Bye-law to take effect.*
FINCASTLE, MEAVEG, BALLANACHIST, SOUTH LACASTILE, BORVE, and OBB (HARRIS)—*continued.*	water; with regard to the river Meaveg, the bridge on the high road between Tarbert and Fincastle; with regard to the river Ballanachist, the ford on the road from Tarbert to Fincastle; with regard to the South Lacastile river, the ford on the road from Tarbert to Luscantire; with regard to the Borve river, the bridge at Borve; and with regard to the Obb river, the mill at Obb.	
FINDHORN . .	1st. That the limits of the district of the river Findhorn shall be—on the west, a line drawn due north-west (true) from the summit of Macbeth's hillock, and on the east, the ditch known as Cooper's ditch, being the boundary between the properties of Lady Dunbar Brander, and Sir Alexander Gordon Cumming, Bart.; and that the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be a line drawn from the chimney of the steam engine of Netherton, of Grange farm steading, to the north end of the cot house, now in the occupation of the shepherd, Donald M'Lellan on Seafield farm, and continued across the river.	10th Feb. 1863.
FLEET (Sutherlandshire)	1st. That the limits of the district of the river Fleet (Sutherlandshire), shall be—on the south, Embo point; on the north, Strathsleven point; and that the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be the mound.	9th Oct. 1863.
FLEET (Kirkcudbright)	1st. That the limits of the district of the river Fleet (Kircudbright), shall be—on the west, the point south of moss yard, called Ringdow point; on the east, a straight line drawn from the summit of Bar Hill to the most northerly point of Barlocco Isle, and continued through	10th Feb. 1863.

Names of Rivers.	*Limits of District and Division between Upper and Lower Proprietors.*	*Date from which Bye-law to take effect.*
FLEET (Kirkcudbright)—*continued.*	the Isle; and that the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be the bridge of the high road from Castle Douglas to Newton Stewart.	
FORSS . . .	1st. That the limits of the district of the river Forss shall be—on the east, Brim's Head; on the west, the boundary between the counties of Caithness and Sutherland; and that the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be a line drawn from the north side of the fishing house on the beach, and on the right bank of the river, at right angles with the river.	10th Feb. 1863.
FORTH . . .	1st. That the limits of the district of the river Forth shall be—on the north, Fife Ness; on the south, the boundary between the counties of Haddington and of Berwick; and that the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be, on the Forth, the Craigforth cruive dyke, and on the Allan, the Scottish Central Railway bridge.	10th Feb. 1863.
FYNE (Loch) . .	1st. That the limits of the district of Loch Fyne shall be—on the east, Ardlamont point; on the west, Skipness Castle point; and that the district shall consist of the portions of the sea coast and the estuary, and the rivers, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors,	10th Feb. 1863.

Names of Rivers.	*Limits of District and Division between Upper and Lower Proprietors.*	*Date from which Bye-law to take effect.*
FYNE (Loch)—*continued.*	shall be the bridge of the public road from Inverary running round the head of Loch Fyne over the rivers Aray, Shira, and Fyne.	
GIRVAN . . .	1st. That the limits of the district of the river Girvan shall be—on the north, Turnberry Castle point; on the south, Bennane Head; and that the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be 100 yards below the bridge on the high road from Ayr to Girvan.	10th Feb. 1863.
GLENELG . . .	1st. That the limits of the district of the river Glenelg shall be—on the north, Kyle Rhea ferry; on the south, a line drawn due east from the north end of Sandag Island; and that the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be the stepping-stones across the river from Kirkton on the left bank to Galder on the right bank.	10th Feb. 1863.
GOUR . . .	1st. That the limits of the district of the river Gour shall be—on the north, the landing place at Corran ferry; and on the south, a point two statute miles to the southward of the river Gour, the distance to be measured along the coast at high water mark from the easternmost point of the south bank of the said river's mouth; and the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be Sallachan Bridge.	10th Oct. 1863.
GREISS, LAXDALE and TONG or THUNGA	1st. That the limits of the district of the river Greiss shall be Butt of Lewis on	2d May 1865.

Names of Rivers.	*Limits of District and Division between Upper and Lower Proprietors.*	*Date from which Bye-law to take effect.*
GREISS, LAXDALE and TONG or THUNGA—*continued.*	the north; Chumpan or Tiumpan Head on the south; and that the district shall consist of the portions of the sea coast and the estuary, and the rivers, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be GREISS Stone Wall on left bank running north and south a little to the eastward of Greiss shepherd's house, and extending down to the river. LAXDALE—Line due south from Giarraidh Scoir. TONG or THUNGA—Ford of Sands road which passes manse.	
GRUDIE or DIONARD	1st. That the limits of the district of the river Grudie or Dionard shall be—on the east, Cave of Smoo; on the west, Cape Wrath; and that the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be the site of the old cruives above Rocky Island.	9th Oct. 1863.
GRUINARD and LITTLE GRUINARD	1st. That the limits of the district of the rivers Gruinard and Little Gruinard shall be—on the east, Static point; on the west, Greenstone point; and that the district shall consist of the portions of the sea coast and the estuary, and the rivers contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be a line drawn from the Lodge in the occupancy of Major Duff, at right angles with the river.	10th Feb. 1863.
HALLADALE . .	1st. That the limits of the district of the river Halladale shall be—on the east, the boundary between the counties of Caithness and Sutherland; on the west, Rhu-na-Claich; and that the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points.	9th Oct. 1863.

Names of Rivers.	*Limits of District and Division between Upper and Lower Proprietors.*	*Date from which Bye-law to take effect.*
HALLADALE—*continued.*	2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be the ferry on the road from Thurso to Tongue.	
HELMSDALE . .	1st. That the limits of the district of the river Helmsdale shall be—on the south, Crackaig point; on the north, boundary between the counties of Caithness and Sutherland; and that the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be a line drawn from the west dyke of the burying ground at Helmsdale to the cross dyke opposite.	9th Oct. 1863.
HOPE and POLLA, or STRATHBEG.	1st. That the limits of the district of the rivers Hope and Polla, or Strathbeg, shall be—on the east, Strone-na-damf; on the west, Cave of Smoo; and that the district shall consist of the portions of the sea coast and the estuary, and the rivers, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be, for the HOPE, the bottom of 'Great Hill Pool,' 48 yards below the old cruives; and for the river POLLA, the bridge of the road from Tongue to Durness.	9th Oct. 1863.
INCHARD . . .	1st. That the limits of the district of the river Inchard shall be—on the north, Cape Wrath; on the south, Ardmore point; and that the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be the cruive below bridge of public road from Durness to Scourie.	9th Oct. 1863.
INNER in Jura . .	1st. That the limits of the district of the	24th Nov. 1865.

Names of Rivers.	*Limits of District and Division between Upper and Lower Proprietors.*	*Date from which Bye-law to take effect.*
INNER in Jura—*continued.*	river Inner in Jura shall be—the whole coast of the islands of Jura and Scarba, with the rocks and islets adjoining thereto. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be the end of the wall extending to right bank of river from keeper's house.	
INVER . . .	1st. That the limits of the district of the river Inver shall be—on the north, Stoerhead; on the south, Kirkaig point; and that the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be the bridge on the road from Inver to Lairg.	9th Oct. 1863.
IORSA in Arran . .	1st. That the limits of the district of the river Iorsa in Arran shall be—the whole coast of the island of Arran, including Pladda and Lamlash, or Holy Island. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be the bridge below Iorsa cottage.	24th Nov. 1865
IRVINE and GARNOCH	1st. That the limits of the district of the rivers Irvine and Garnoch shall be—on the North, Fairlee Head; on the south, the Lighthouse on the point of Troon harbour; and that the district shall consist of the portions of the sea coast and the estuary, and the rivers, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be Fullerton bridge on the Irvine, and the bridge of the Glasgow and South-Western Railway on the Garnoch.	10th Feb. 1863.
KENNART . . .	1st. That the limits of the district of the river Kennart shall be—on the north, Ru Dunan point; on the south, a line drawn from the south-east point of Isle	10th Feb. 1863.

Names of Rivers.	*Limits of District and Division between Upper and Lower Proprietors.*	*Date from which Bye-law to take effect.*
KENNART—*continued.*	Martin to Ardmain point; and that the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be the bridge of the high road from Inver to Ullapool.	
KINLOCH (Kyle of Tongue)	1st. That the limits of the district of the river Kinloch (Kyle of Tongue) shall be—on the east, Port Lamigoe; on the west, Strone-na-damf; and that the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be the stepping-stones above Kinloch farm house.	9th Oct. 1863.
KILCHOAN or INVERIE (Loch Nevis).	1st. That the limits of the district of the river Kilchoan or Inverie (Loch Nevis) shall be—on the north, Ardna Slishnich point; on the south, Maleg Rocks; and that the district shall consist of the portion of the sea coast and the estuary, and the river contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be a line drawn at right angles with the river, from the end nearest the river of the dyke next below Kilchoan house.	10th Feb. 1863.
KIRKAIG . . .	1st. That the limits of the district of the river Kirkaig shall be—on the north, Kirkaig point; on the south, the Dunan point; and that the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be the head of the pool below the old cruives known as the Craigford pool.	10th Feb. 1863.

Names of Rivers.	*Limits of District and Division between Upper and Lower Proprietors.*	*Date from which Bye-law to take effect.*
KISHORN . . .	1st. That the limits of the district of the river Kishorn shall be—on the north, Skeir Vore; and on the south, the Aird; and that the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be the bridge of the public road from Jeantoun to Applecross.	10th Feb. 1863.
KYLE OF SUTHERLAND	1st. That the limits of the district of the Kyle of Sutherland shall be—on the east, Tarbert Ness; on the west, Embo point; and that the district shall consist of the portions of the sea coast and the estuary, and the rivers, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be—on the OYKILL, the end next the rim of the cross dyke at the west end of the Castlehaugh situated at side of public road from Laird to Oykill bridge; on the CASSILY, the end next the run of the cross dyke on the left bank of the Cassely next to its junction with the Oykill; on the SHIN, the upper end of the Garden Pool; on the CARRON, a line drawn from Balganowan fishing house on the right bank to the chimney of the steam engine of the farm of Never Carron on the left side of the river.	10th Feb. 1863.
LAGGAN and SORN in Islay.	1st. That the limits of the district of the river Laggan in Islay shall be—the whole coast of the islands of Islay, Colonsay, and Oronsay, with the rocks and islets immediately adjoining thereto. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be—LAGGAN, corner of wall with field gate on the right bank at first bend from river mouth; SORN, fence of Islay house grounds.	24th Nov. 1865.
LAXFORD . . .	1st. That the limits of the district of the	9th Oct. 1863.

Names of Rivers.	*Limits of District and Division between Upper and Lower Proprietors.*	*Date from which Bye-law to take effect.*
LAXFORD—*continued.*	river Laxford shall be—on the north, Ardmore point; on the south, Stoerhead; and that the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be the bridge on the road from Durness to Scourie.	
LEVEN . . .	1st. That the limits of the district of the river Leven shall be—on the north, the landing-place on the Inverness-shire shore of Corran ferry; on the south, the projecting point north-west of Ardsheal house; and that the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be 150 yards below the Boine Burn on the right bank of the river, the distance to be measured down the course of the river.	10th Feb. 1863.
LITTLE BROOM . .	1st. That the limits of the district of the river Little Broom shall be—on the north, Cailleach Head; on the south, Statie point; and that the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be a line drawn due north-east from the saw-mill, the property of Hugh Mackenzie of Dundonnell, Esquire.	9th Oct. 1863.
LOCHY . . .	1st. That the limits of the district of the river Lochy shall be—on the west, Barony point; on the east, Port Appin ferry, including the west coast of Lismore, excepting those portions of the coast and estuary and rivers which lie between a point two statute miles to the northward of the mouth of the river Scaddle, the distance to be measured by	6th Oct. 1863.

Names of Rivers.	*Limits of District and Division between Upper and Lower Proprietors.*	*Date from which Bye-law to take effect.*
LOCHY—*continued.*	a line drawn along the shore at high-water mark from the most southernly point on the left bank of the mouth of the said river, and the march burn forming the boundary between the properties of Ardgour and Kingairloch, and excepting the portions of the sea coast and estuary and river which lie between the landing place on the Inverness shore of Corran ferry and the projecting point north-west of Ardsheal house; and that the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be one quarter of a mile above the suspension bridge on the public road from Bannavie to Fort William, the distance to be measured along the course of the river.	
LOCH LONG (Luingi and Elchaig).	1st. That the limits of the district of Loch Long (Luingi and Elchaig) shall be—on the west, Kyle Akin ferry; on the east, Elien Donan Castle, together with that portion of the island of Skye which lies between Kyle Akin and Kyle Rhea ferries; and that the district shall consist of the portions of the sea coast and the estuary, and the rivers contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be a line drawn at right angles with the river immediately below the junction of the Luingi and Elchaig.	10th Feb. 1863.
LOCH ROAG (Lewis), Rivers BLACKWATER, GRIMERSTA, and MORSGAIL.	1st. That the limits of the district of Loch Roag (Lewis), rivers Blackwater, Grimersta, and Morsgail, shall be—Butt of Lewis on the north-east to Gobnah Airde Moire on the Ordnance map, called Ru-a-Chruidh on the Admiralty chart, on the south-west; and that the district shall consist of the portions of the sea coast and the estuary, and the rivers, contained between the said points. 2d. That the point below which the pro-	2d May 865.

Names of Rivers.	*Limits of District and Division between Upper and Lower Proprietors.*	*Date from which Bye-law to take effect.*
Loch Roag (Lewis), Rivers Blackwater, Grimersta, and Morsgail—*continued.*	prietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be, Blackwater, lowest bridge, namely, that of public road from Stornoway to Uig; Grimersta, criuve below lowest bridge, namely, that of public road from Stornoway to Uig; Morsgail, lowest bridge, namely, that of public road from Stornoway to Uig.	
Luce . . .	1st. That the limits of the district of the river Luce shall be—on the west, the Lighthouse on the Mull of Galloway; and on the east, Gillespie river; and that the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be a line drawn from the point of the Bent of Balcarrie, the property of Sir John Dalrymple Hay, Bart., to the cottage in the occupation of John Baillie of the Island, also the property of the said Sir John Dalrymple Hay.	10th Feb. 1863.
Lossie . . .	1st. That the limits of the district of the river Lossie shall be—on the west, the ditch known as Cooper's Ditch, being the boundary between the properties of Lady Dunbar Brander and Sir Alexander Gordon Cumming, Bart.; and on the east, a line drawn due north (true) from the west end of the Bent Hills on the right bank of the said river Lossie; and that the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be the ford on the road from Lossie-mouth to Garmouth.	10th Feb. 1863.
Lussa (Mull) and River Loch Uisk to Loch Buy.	1st. That the limits of the district of the river Lussa (Mull) and river from Loch Uisk to Loch Buy shall be Duart Castle, at the south-east; entrance of the Sound of Mull, on the north-east;	23d May 1865.

Names of Rivers.	*Limits of District and Division between Upper and Lower Proprietors.*	*Date from which Bye-law to take effect.*
LUSSA (Mull) and River LOCH UISK to LOCH BUY—*continued.*	Fidden in the Sound of Iona, including Earraid Island on the south-west; and that the district shall consist of the portions of the sea coast and the estuary, and the rivers, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be, LUSSA, junction of the first stream from the left bank down from the bridge of the public road over the Lussa to Loch Buy, which stream flows through the bridge on the public road between Cragnure and Loch Scraidain; river from LOCH UISK into LOCH BUY, line of north or north-west side of Moy Castle.	
MOIDART . . .	1st. That the limits of the district of the river Moidart shall be—a line, drawn in a northernly direction from a point of land or rock on the mainland of the south shore of Loch Moidart, called Stroulinorg, through the centre of the island called Eilean Grucach or Gruachan, thence through that portion of the island of Strona called Stronabeg till it reaches the mainland of the north shore of Loch Moidart; and that the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be 200 yards (to be measured by the course of the river) down stream from the bridge over the Moidart on the road from Moidart to Shiel.	10th Feb. 1863.
MORAR . . .	1st. That the limits of the district of the river Morar shall be—on the north, Maleg Rocks; on the south, Ru-Arasaig; and that the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be the bridge on the road to Arasaig.	10th Feb. 1863.

Names of Rivers.	*Limits of District and Division between Upper and Lower Proprietors.*	*Date from which Bye-law to take effect.*
MULLANAGEREN, HORASAVY, and LOCH-NA-CISTE.	1st. That the limits of the district of the rivers Mullanageren, Horasavy, and Loch-na-Ciste shall be the whole coasts of the island of North Uist, including the islands of Pabbay, Berneray, Baleshare, and adjacent islets; and that the district shall consist of the portions of the sea coast, and the estuaries and rivers of the said islands. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be—with regard the Mullanageren river, the mill on the river; with regard to the Horasavy river, the bridge over the river; and with regard to Loch-na-Ciste, the bridge on the south road.	31st Dec. 1867.
NAIRN . . .	1st. That the limits of the district of the river Nairn shall be—on the west, a point on the coast two and one-half statute miles, to be measured westward in a straight line from the outer end of the west pier of Nairn harbour, and on the east, a line drawn due north-west (true) from the summit of Macbeth's Hillock; and that the district shall consist of the portions of the sea-coast and the estuary, and the river contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be the bridge of the public road over the Nairn River from Nairn to Forres.	10th Feb. 1863.
NAVER and BORGIE .	1st. That the limits of the district of the rivers Naver and Borgie shall be—on the east, Armadale point; on the west, Port Larnigoe; and that the district shall consist of the portions of the sea coast and the estuary, and the rivers, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be—for the river NAVER, the ferry at the road from Thurso to Tongue; for the river BORGIE, the foot bridge between Torrisdale and Borgie Lone.	27th Nov. 1863.
NESS . . .	1st. That the limits of the district of the	10th Feb. 1863.

Names of Rivers.	*Limits of District and Division between Upper and Lower Proprietors.*	*Date from which Bye-law to take effect.*
NESS—*continued.*	river Ness shall be—on the west, a straight line drawn from the north pier to the south pier of Kessock ferry; on the east, a point on the coast two and one-half statute miles, to be measured westward in a straight line from the outer end of the west pier of Nairn harbour, and on the north-west, Sutor point; and that the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be a straight line drawn at right angles with the river, at the lowest point of the island.	
NELL, FEOCHAN, and EUCHAR (Loch Feochan).	1st. That the limits of the district of the river Nell, Feochan, and Euchar shall be—on the north, Minard point; on the south, the bridge from the mainland over Siel Sound to Jul island; and that the district shall consist of the portions of the sea coast and the estuary, and the rivers, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be, the rivers NELL and FEOCHAN, the bridge of the public road between Oban and Airdrishaig; and for the river EUCHAR, an extension of the line of cross stone dyke on left bank of the river below the Free Church and a little above Breadalbane fishing house.	2d Dec. 1864.
NITH . . .	1st. That the limits of the district of the river Nith shall be—on the west, the most projecting point of land, south-east of Whitehill, between Portling Bay and Portowarren Bay; on the east a line drawn due south (true) from the easternmost end of East Park farm, sea bank; and that the district shall consist of the portions of the sea coast and the estuary, and the river contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower pro-	10th Feb. 1863.

Names of Rivers.	*Limits of District and Division between Upper and Lower Proprietors.*	*Date from which Bye-law to take effect.*
NITH—*continued.*	prietors, and above which the proprietors of fisheries shall be upper proprietors, shall be the dyke or mill dam next the mouth of the river.	
ORMSARY (Loch Killisport), LOCH HEAD RIVER, and STORNOWAY (Mull).	1st. That the limits of the district of the rivers Ormsary (Loch Killisport), Loch Head river, and Stornoway (Mull) shall be—Knap point on the north, Mull of Cantyre on the south; and that the district shall consist of the portions of the sea coast and the estuary, and the rivers, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be, ORMSARY, fall 60 yards below bridge of public road along shore; LOCH HEAD RIVER, upper end of new straight cut or channel on left bank of river, which new cut has been closed up at the ends; STORNOWAY RIVER, bridge of public road to Lergnahunseon; and that the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points.	2d May 1865.
PENNYGOWN or GLENFORSA and AROS.	1st. That the limits of the district of the rivers Pennygown or Glenforsa and Aros shall be—on the east, Duart Castle, and on the west, Ardmore point at the two extremities of the Sound of Mull; and that the district shall consist of the portions of the sea coast and the estuary, and the rivers, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be, PENNYGOWN, rocky waterfall about 100 yards above general tide of high water at Beach; AROS, bridge of road between Salen and Tobermory.	2d May 1865.
RESORT . . .	1st. That the limits of the district of the river Resort shall be—Gobnah Airde Moire, on the Ordnance Map called Ru-a-Chruidh on the Admiralty Chart in Lewis, on the north or east through the shortest distance between the main land of Harris to Scarpa Island, and to the most northernly point of that island	2d May 1865.

Names of Rivers.	*Limits of District and Division between Upper and Lower Proprietors.*	*Date from which Bye-law to take effect.*
RESORT—*continued.*	on the south or west; and that the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be the mouth of stream in Harris immediately below Mr Milbank's cottage.	
RUEL or DARUEL .	1st. That the limits of the district of the river Ruel or Daruel shall be—on the west, Ardlamont point; on the east, Strone point, in the Kyles of Bute; and that the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be the head of island in Gosthen, Ferninach field, on the farm of Loch Head, the property of Mrs Campbell, Ormidale House.	10th Feb. 1863.
SANDA . . .	1st. That the limits of the district of the river Sanda shall be—on the north, a point two statute miles to the southward of the mouth of the river Gour, the distance to be measured along the coast at high water mark from the eastern-most point of the south bank of the said river's mouth; and on the south the march burn forming the boundary between the properties of Ardgour and Kingairloch; and that the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be a straight line drawn from a rock known as the Sanda Rock to the smearing house, which is 70 yards below the stepping stone, in the ford below the farmhouse of Inversanda.	17th July 1863.
SCADDLE . . .	1st. That the limits of the district of the river Scaddle shall be—on the north, a point two statute miles to the northward	10th Feb. 1863.

Names of Rivers.	*Limits of District and Division between Upper and Lower Proprietors.*	*Date from which Bye-law to take effect.*
SCADDLE—*continued.*	of the mouth of the river Scaddle, the distance to be measured by a straight line from the most southernly point on the left bank of the mouth of the river, and on the south the landing-place on the Argyllshire shore of Corran ferry; and that the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be the bridge on the public road from Inverscaddle to Corran ferry.	
SHIEL, LOCH SHIEL .	1st. That the limits of the district of the river Shiel, Loch Shiel, shall be—on the north, Ru Smirsiri, and on the south Stron Beg in the Sound of Mull, excepting that portion of the coast and estuary and river contained within a line drawn in a northerly direction from a point of land or rock on the mainland on the south shore of Loch Moidart called Stroulinorg, through the centre of the island, called Eilean Grucach, thence through that portion of the island of Strona called Stronabeg till it reaches the mainland of the north shore of Loch Moidart; and that the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be the site of the cruives.	10th Feb. 1863.
SLIGACHAN, BROADFORD, and PORTREE.	1st. That the limits of the district of the rivers Sligachan, Broadford, and Portree shall be—south coast included between Ru Ard de Cheolan or Aird point on north to Sleat point on south; and that the district shall consist of the portions of the sea coast and the estuary, and the rivers, continued between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be, SLIGACHAN, Forrester's House	2d May 1865.

Names of Rivers.	*Limits of District and Division between Upper and Lower Proprietors.*	*Date from which Bye-law to take effect.*
SLIGACHAN, BROADFORD and PORTREE —*continued.*	at mound on left bank of the river; BROADFORD, Mr Mackinnon's shepherd's house; PORTREE, foot bridge to Bentmore farm.	
SNIZORT, ORLEY, OZE (Loch Bracadale), and DRYNOCH (Loch Harport).	1st. That the limits of the district of the rivers Snizort, Orley, Oze (Loch Bracadale), and Drynoch (Loch Harport) shall be—west coast included between Ru Ard de Cheolan or Aird point on north; Sleat point on south; and that the district shall consist of the portions of the sea coast and the estuary, and the rivers, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be, SNIZORT, at the rocky fall at meal mill on right bank; ORLEY, bridge of public road near Caroy inn on map; OZE, upper end of old yairs; DRYNOCH, head of Loch Harport, bridge of public road, Dunvegan to Sligachan.	23d May 1865.
SPEY	1st. That the limits of the district of the river Spey shall be—on the west, a line drawn due north (true) from the west end of the Bent hills on the right bank of the river Lossie, and on the east Cowhyth Head; and that the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be a line drawn from the gasworks chimney at Garmouth to Flood farmhouse in the occupation of Adam Robertson, and the property of the Duke of Richmond.	10th Feb. 1863.
STINCHAR . . .	1st. That the limits of the district of the river Stinchar shall be—on the north Bennane Head; on the south the lighthouse on the Mull of Galloway; and that the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors,	20th Sep. 1867.

Names of Rivers.	*Limits of District and Division between Upper and Lower Proprietors.*	*Date from which Bye-law to take effect.*
STINCHAR—*continued.*	shall be 200 yards below the bridge of the high road from Ballantrae to Stranraer.	
STRATHY . . .	1st. That the limits of the district of the river Strathy shall be—on the east, Rhu-na-Claich; on the west, Armadale point; and that the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be the bridge on the road from Thurso to Tongue.	9th Oct. 1863.
SUNART (Loch) . .	1st. That the limits of the district of Loch Sunart shall be—on the east, the end of Fuenary island; on the west, Stron Beg in the island of Mull; and that the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be on the river STRONTIAN, bridge of public road from Strontian to Sheilbridge on river CARNICH, bridge of road to Carnich farm and Loch Head.	13th Oct. 1863.
TAY	1st. That the limits of the district of the river Tay shall be—on the north, Red Head; on the south, Fife Ness; and that the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be, on the TAY, the bridge of Perth; on the EARN, the North British Railway bridge.	10th Feb. 1863.
THURSO . . .	1st. That the limits of the district of the river Thurso shall be—on the east, Duncansbay Head, and on the west, Brims Ness; and that the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points.	10th Feb. 1863.

Names of Rivers.	*Limits of District and Division between Upper and Lower Proprietors.*	*Date from which Bye-law to take effect.*
THURSO—*continued.*	2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be the bridge of the public road at Thurso.	
TORRIDON . . .	1st. That the limits of the district of the river Torridon shall be—on the north, Ru Ruag; and on the south, the mouth of the burn at Camushole near the south-east corner of upper Loch Torridon; and that the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be the stepping stones leading from Torridon road to Shieldag.	10th Feb. 1863.
TWEED . . .	*See* the end of this Schedule.	
UGIE	1st. That the limits of the district of the river Ugie shall be—on the north, Cairnbulg point; on the south, the boundary between the parishes of Peterhead and Cruden; and that the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be a line drawn from the rock standing on the left bank of the river Ugie in mains of Inverugie farm to the north side of the farm steading of Waterside of Balmoor on the right bank.	10th Feb. 1863.
ULLAPOOL . . .	1st. That the limits of the district of the river Ullapool shall be—on the north, a line to be drawn from the south-east point of Isle Martin to Ardmain point, and on the south the boundary between that portion of the county of Cromarty and of the county of Ross; and that the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower pro-	10th Feb. 1863.

Names of Rivers.	*Limits of District and Division between Upper and Lower Proprietors.*	*Date from which Bye-law to take effect.*
ULLAPOOL—*continued.*	prietors, and above which the proprietors of fisheries shall be upper proprietors, shall be a line drawn at right angles with the river, from the lower end of the island next the mouth of the river.	
URR	1st. That the limits of the district of the river Urr shall be—on the west, Aird point; on the east, the most projecting point of land south-east of Whitehill between Portling Bay and Portowarren Bay; and that the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be a rock or large stone on the left bank of the river 140 yards above the point of junction with the Dalbeattie burn.	10th Feb. 1863.
WICK	1st. That the limits of the district of the river Wick shall be—on the south, Ulbster Head, and on the north, Duncansbay Head; and that the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be a line drawn at right angles with the river, at the upper end of the old cruives.	10th Feb. 1863.
YTHAN	1st. That the limits of the district of the river Ythan shall be—on the north, the boundary between the parishes of Peterhead and Cruden; on the south, the northern boundary of the fishings of Menie; and that the district shall consist of the portions of the sea coast and the estuary, and the river, contained between the said points. 2d. That the point below which the proprietors of fisheries shall be lower proprietors, and above which the proprietors of fisheries shall be upper proprietors, shall be the old ford, known as Ellis ford, on the old road (now unused) from Peterhead to Aberdeen.	1st May 1863.

TWEED.

25 & 26 Vict. c. 97 and 26 & 27 Vict. c. 50.

WE, the Commissioners appointed under the 25th and 26th Vict. c. 97, and empowered by the 26th & 27th Vict. c. 50, to extend the limits of the mouth or entrance of the river Tweed northwards from the limits thereof, as defined in the 'Tweed Fisheries' Amendment 'Act, 1859,' along the sea coast and into the sea to such points and to such extent as we may fix, do hereby fix and determine that the limits of the mouth or entrance of the said river Tweed shall extend northwards from the limits thereof as defined in the said 'Tweed 'Fisheries' Amendment Act, 1859,' along the sea coast to the boundary between the counties of Haddington and of Berwick, and shall also extend into the sea five miles in front of that portion of the coast hereby added to the limits of the said river Tweed, the distance to be measured at right angles with the coast.

Given under our hands this 10th day of August 1863.

W. J. Ffennell,
Fred. Eden,
James Leslie,
} Commissioners.

Fisheries Department, Home Office,
Approved,
Whitehall, 30th September 1863,
G. Grey.

(This bye-law to take effect from the 6th day of October 1863.)

(B.)

Bye-law.

25 & 26 Vict. c. 97.
26 & 27 Vict. c. 50.
27 & 28 Vict. c. 118.

'Acts to regulate and amend the Law respecting the Salmon Fisheries of Scotland.'

District of the River Add.

WE, the Commissioners appointed under the said Acts, and empowered thereby 'to fix and define, for the purposes of this '[the first-recited] Act, and the other Acts relating to salmon and

'Salmon Fisheries in Scotland, the natural limits which divide each 'river in Scotland (including the estuary thereof) from the sea, in so 'far as the same may not be already fixed by statute or by judicial 'decision,' do hereby fix and define the limits which divide the river Add, including the estuary thereof, from the sea, to be, on the north, the most projecting point 400 yards west-south-west of Duntroon Castle; on the south, a point nearly 200 yards west of the mouth of the Crinan Canal.

WM. J. FFENNELL,
FRED. EDEN,
JAMES LESLIE,
} *Commissioners.*

Fisheries Department, Home Office,
26th day of April 1864.

Approved,
Whitehall, 25th August 1864.
G. GREY.

(This bye-law to take effect from the 6th day of September 1864.)

The same bye-law shall apply to the several rivers according to the limits, and take effect from the dates, undermentioned respectively.

Names of Rivers.	*Limits of Estuary.*	*Date from which Bye-law to take effect.*
ALINE . . .	A straight line drawn 15 degrees north of true west from Bolorkle point on the east shore to the mainland on the west shore.	11th Mar. 1865.
ALNESS . . .	A straight line drawn between the East and West Sutors of Cromarty.	14th Mar. 1865.
ANNAN . . .	*See* Nith.	—
APPLECROSS . .	A straight line drawn from mouth of burn on the north shore outward, and distant 1500 yards from the manse, to the outermost pier on the south shore, which is distant 900 yards from the innermost pier.	11th Mar. 1865.
ARNISDALE in Loch Hourn . . .	A straight line drawn from the west end of Dry Island on the north side of Arnisdale river, through Skier Laven, to the Ru on the south side of that river.	11th Mar. 1865.
AWE . . .	The point north-west of Dunstaffnage Castle on the south, and the south-west point of Garbhard on the north.	6th Sept. 1864.
AYLORT (Kinloch) .	A straight line drawn from the outermost	11th Mar. 1865.

Names of Rivers.	*Limits of Estuary.*	*Date from which Bye-law to take effect.*
AYLORT (Kinloch)—*continued* . .	point of Aird Nish on the north shore, through Goat Island, to the mainland on the south.	
AYR	A segment of a circle of 400 yards radius, drawn from a centre placed halfway between the outer end of the break-water and the outer end of the south pier, with tangents to the circle extended to meet high water mark of spring tides in the direction of the south end of Newton Lodge on the north, and in the direction of the seaward end of the lane south of the gasworks on the south.	14th Mar. 1865.
BALGAY	*See* Torridon.	—
BAA and GLENCOILLEADAR . .	As regards the river BAA,—a straight line due north and south through the outer end of Eorsa Island. As regards the river GLENCOILLEADAR,—Ard Kilfinichen on the north, a straight line thence in the direction of the Free Church to the south shore.	4th Aug. 1865.
BEAULY	A straight line, drawn due south-east, true meridian, from the centre of the Three Burns to the southern shore, thus cutting the Black Buoy, as at present placed on the north end of the Whiten Ness Sands.	13th June 1865.
BADACHRO and KERRY in Gairloch . .	A straight line drawn from the north-westerly point of Stron-na-Ard on the east shore, touching the outer end of Eilean Harrisdale, to the mainland west.	13th June 1865.
BLADENOCH CREE and FLEET . . .	A straight line drawn from Eggerness point on the west, through the centre of Barlocco Island, thence to the nearest point of the mainland on the east of that island.	11th Mar. 1865.
BERRIEDALE . .	A straight line of about 250 yards in length, drawn in a direction a little to the east of true north from the most projecting point of rocks above low water, south-east of the old castle, to the most projecting point of rock at low water, south-east of the northern extremity of the small bay into which the river discharges, and the shortest lines connecting those rocks with the shore.	22d April 1864.

Names of Rivers.	*Limits of Estuary.*	*Date from which Bye-law to take effect.*
BERVIE . . .	A portion of a circle of 150 yards radius, to be drawn from a centre placed mid-channel in the river where it joins the sea at low water at equinoctial spring tides, and continued shorewards by tangents to the circle drawn to the nearest points of the shore of the respective sides of the river at high water mark, also of equinoctial spring tides.	22d April 1864.
BROOM and ULLAPOOL (Loch Broom)	A straight line drawn from Ru-na-Caddal on the north to the Ru-Camas Voarach on the south.	13th June 1865.
BRORA . . .	A portion of a circle of 300 yards radius, having its centre in mid-channel of the river at low water of spring tides, and extended shorewards by tangents at right angles to (or to the nearest point of) high water mark.	11th Mar. 1865.
CARRADALE in Cantyre . . .	From the outermost point at low water of spring tides of the most projecting point of rocks on the south or right side of the river a straight line drawn westward to the nearest point of the shore, and another straight line drawn in the direction of Carradale house, both lines extending up to high water mark.	26th Jan. 1866.
CARRON . . .	*See* Kishorn.	—
CLYDE and LEVEN and ECKAIG, . .	A straight line drawn east from Toward Point Light.	7th Mar. 1865.
CONON . . .	A straight line drawn between the East and West Sutors of Cromarty.	7th Mar. 1865.
CREE . . .	*See* Bladenoch.	—
CREED or STORNOWAY and LAXAY .	As regards the river CREED or STORNOWAY, a line drawn due east from the lighthouse. As regards the river LAXAY, a straight line drawn from Eilean Chalabrigh on the north to the outer end of Eilean Chalam Ghille and a straight line thence to the south shore.	4th Aug. 1865.
CRERAN (Loch Creran)	A line drawn from the southernmost point of the mainland immediately north of Ereska Island, and continued along the outer face of that island to the projecting point of the mainland nearest to the south-west point of the said island.	11th Mar. 1865.

Names of Rivers.	*Limits of Estuary.*	*Date from which Bye-law to take effect.*
DEE (Aberdeenshire) .	A portion of a circle of 400 yards radius to be drawn from a centre placed midway between the outermost point of the north pier and the outermost point of the breakwater, and continued shorewards by tangents to the circle drawn to the nearest points of the shore of the respective sides of the river at high water mark of equinoctial spring tides.	7th Mar. 1865.
DEE (Kirkcudbright) .	A straight line drawn from Balinoc Head to the outer point of Little Ross Island, and thence to the nearest point on the mainland.	22d April 1864.
DEVERON . . .	A portion of a circle of 400 yards radius to be drawn from a centre placed midchannel in the river where it joins the sea at low water of equinoctial spring tides, and continued shorewards by tangents to the circle drawn to the nearest points of the shore of the respective sides of the river at high water mark, also of equinoctial spring tides.	7th Mar. 1865.
DON	A portion of a circle of 400 yards radius to be drawn from a centre placed midchannel in the river where it joins the sea at low water of equinoctial spring tides, and continued shorewards by tangents to the circle drawn to the nearest points of the shore of the respective sides of the river at high water mark, also of equinoctial spring tides.	22d April 1864.
DOON . . .	A segment of a circle of 400 yards radius, drawn from a centre placed half way between the nearest end of the two rocks on the opposite sides of the river mouth, and on the line of the seaward side of those rocks, both at low water of equinoctial spring tides, with tangents to the circle extending to where the other line on the 6-inch Ordnance Map, showing the municipal boundary, crosses high water mark on the north, and extending to high water mark in the direction of Alloway corn mill on the south, being at high water mark 250 yards from the south side of the river.	14th Mar. 1865.
DRUMMACHLOY or GLENMORE (Island of Bute) . .	A straight line drawn from Kildavennan point to island McNeil.	5th May 1868.

Names of Rivers.	*Limits of Estuary.*	*Date from which Bye-law to take effect.*
DUNBEATH . .	On the north, the most projecting point of Pitormie Head; on the south, the projecting rock near the castle, and between the castle and the harbour and seaward a semicircle drawn from a centre placed half way between those points.	11th Mar. 1865.
ECKAIG . . .	*See* Clyde and Leven.	—
ESK (Kirkcudbright) .	*See* Nith.	—
ESK, North (Forfar) .	A portion of a circle of 400 yards radius to be drawn from a centre placed mid-channel in the river where it joins the sea at low water of equinoctial spring tides, and continued shorewards by tangents to the circle drawn to the nearest points of the shore of the respective sides of the river at high water mark, also of equinoctial spring tides.	14th Mar. 1865.
ESK, South . .	A straight line drawn from the Tower of Scurdy Ness to the outermost point of Scurdy Stone; thence a straight line extending due north 500 yards; and on the north a straight line to be drawn from the last-named point to a point at high water mark, spring tides, 800 yards distant from the Low Light House, the distance to be measured in a straight line.	22d April 1864.
EWE . . .	A straight line drawn from Ru-na-Gavann on the west shore to Ru Con on the east shore.	11th Mar. 1865.
EUCHAR . . .	*See* Nell and Feochan.	—
FINDHORN . .	A line drawn due north from the outermost of the two shipping piers of the town of Findhorn as extends from high water mark outwards to 200 yards below low water of equinoctial spring tides; on the west, a line parallel with and one and a half miles distant from the foregoing described line, and also extending outwards from high water mark to 200 yards below low water of equinoctial spring tides; and on the north a line of 200 yards out from low water of equinoctial spring tides, and connecting the outer ends of the two lines herein-before described.	7th Mar. 1865.

Names of Rivers.	*Limits of Estuary.*	*Date from which Bye-law to take effect.*
FLEET (Sutherlandshire) . . .	A portion of a circle of 1200 yards radius, having its centre in mid-channel of the river at the Lower Light, and continued to meet high water mark.	11th Mar. 1865.
FLEET (Kirkcudbright)	*See* Bladenoch.	—
FORSS . . .	A straight line drawn from the most north-westerly point of the shore on the west side of the river to the projecting point midway between Brinsness and Cross Kirk on the east side of the river.	22d April 1864.
FORTH . . .	A straight line drawn from the Hound point on the south shore to St David's point on the north.	14th Mar. 1865.
FYNE, SHIRA, and ARAY (Loch Fyne)	Craigan's Ferry, ...	11th Mar. 1865.
GIRVAN . . .	A portion of a circle of 300 yards radius, drawn from a centre placed mid-channel of the river where it joins the sea at low water of equinoctial spring tides, and continued to the shore at high water mark on the respective sides of the river by tangents to the circle drawn at right angles with the shore.	22d April 1864.
GLENELG . . .	A straight line drawn from the east side of the rocks forming the western extremity of Bernera Bay on the north to the projecting point of land at high water mark immediately north of Eilean Reach or Glenbeg River, and Eilean Reach House on the south.	11th Mar. 1865.
GOUR . . .	*See* Lochy.	—
GREISS, LAXDALE, and TONG or THUNGA .	As regards the rivers LAXDALE and TONG or THUNGA, from the rocks at Rudhu-na-Monach at low water line on the north to Gobnan Clach at high water line on the south. A regards the river GRIESS, from the outer point of Sgeir Leathain Island a straight line drawn north to Ston Ruadh and south-west to Creag-Mhor-Bhataisgeir.	4th Aug. 1865.
GRUDIE or DIONARD	A straight line from Far Out point on the east to Stoir point on west (Admiralty Chart).	11th Mar. 1865.

Names of Rivers.	*Limits of Estuary.*	*Date from which Bye-law to take effect.*
Gruinard and Little Gruinard . .	A straight line drawn from the most projecting point between Gruinard House and Douran Rocks on the north to the projecting point west of Mill Bay on the south.	11th Mar. 1865.
Halladale . .	A straight line drawn due west across Melvert Bay from the most projecting point of Salmon Rocks on east.	11th Mar. 1865.
Helmsdale . .	A portion of a circle of 300 yards radius, having its centre in mid-channel of the river at low water of spring tides, and extended shorewards on the north side by a tangent drawn at right angles to (or the nearest point of) high water mark, and on the south by a tangent drawn to meet high water mark at the distance of 300 yards west of the point of land occupied by a curing yard on the west or left bank of the river at high water.	11th Mar. 1865.
Hope and Polla or Strathbeg . .	A straight line from Grave point on west, through outer end of Skeir Bhuie Island and continued east shore (Admiralty Chart).	11th Mar. 1865.
Inchard . . .	A straight line drawn from Kean point on north to the outer point of land between Loch Inchard and Loch Kinsale on south.	11th Mar. 1865.
Inner in Jura . .	A part of a circle of 300 yards radius, having its centre in the middle of the principal channel of the river at low water of equinoctial spring tides, and continued shorewards by tangents to the circle drawn to the nearest points of the shore of the respective sides of the river at high water mark, also of equinoctial spring tides.	26th Jan. 1866.
Inver . . .	A straight line drawn from Kirkaig point on south to Rue Roe on north (Admiralty Chart).	11th Mar. 1865.
Iorsa in Arran . .	A portion of a circle of 400 yards radius, drawn from the centre of the river at low water of equinoctial spring tides, and continued shorewards by tangents to the circle drawn to the nearest points of the shore of the respective sides of the river at high water mark, also of equinoctial spring tides.	26th Jan. 1866.

Names of Rivers.	*Limits of Estuary.*	*Date from which Bye-law to take effect.*
IRVINE and GARNOCH	A portion of a circle of 400 yards radius, to be drawn from a centre placed mid-channel abreast of the Beacon, and continued to the shore at high water mark on the respective sides of the river by tangents to the circle drawn at right angles with the shore.	11th Mar. 1865.
KENNART . . .	A straight line drawn from Ru Beg on the south to the westernmost point of Mealan Bhuie on the north.	11th Mar. 1865.
KINLOCH (Kyle of Tongue) . .	A straight line from outer point of Pier, Scullornie Harbour, on east, to most projecting point of Ard Skuinee on west (Burnett and Scott's County Map).	11th Mar. 1865.
KILCHOAN or INVERIE	A straight line drawn from Scottis House on the north side of the river to Creag Eilean on the south side of the river, and a line from thence to the nearest point of the mainland.	11th Mar. 1865.
KIRKAIG . . .	A straight line drawn from Weather Lump on the north shore, through Big Rock, to the south shore.	11th Mar. 1865.
KISHORN and CARRON	A straight line drawn from the most northernly point of Ru-More to the outside of Garra Island, and a line thence along the outside of Kishorn Island to the nearest point to that last mentioned island of the mainland to the north.	11th Mar. 1865.
KYLE of SUTHERLAND (Shin, Carron, Oykel, and Cassily) . .	On the north, a straight line drawn from Dornoch Church in the direction of Tarbet Ness Lighthouse; and on the east, a straight line drawn due south, true meridian, from the village of Inver, to meet the before mentioned line, the point of meeting of the two lines being three and a quarter statute miles from high water mark at Dornoch, and a like distance from high water mark at Inver.	13th June 1865.
LAGGAN and SORN in Islay . . .	LAGGAN.—Part of a circle of 400 yards radius, having its centre in the middle of the river at low water of equinoctial spring tides, and continued shorewards by tangents to the circle drawn to the nearest points of the shore of the respective sides of the river at high water mark, also of equinoctial spring tides. SORN.—A straight line from the point	26th Jan. 1866.

Names of Rivers.	*Limits of Estuary.*	*Date from which Bye-law to take effect.*
LAGGAN and SORN in Islay—*continued.*	point of the Black Rocks on the west, to Penneycraig on the east, both ends of the line extending up to high water mark.	
LAXFORD . . .	From Dougal Head, on the north-east, through centre of Island Skein, to main-land on south-west (Admiralty Chart).	11th Mar. 1865.
LEVEN . . .	*See* Lochy.	11th Mar. 1865.
LITTLE LOCH BROOM	A straight line drawn from Camus-na-Goal point on the south to the nearest point of land on the northern shore.	13th June 1865.
LOLCHY, LEVEN, SCADDLE, GOUR, and SANDA . .	A straight line drawn due north-west, true meridian, from the westernmost point of land forming the western shore of Cail Bay, and lying north-east of Balnagowan Island to the mainland on the north shore of the Linnhe Loch.	11th Mar. 1865.
LOCH DUICH . .	*See* Loch Luing.	—
LOCH LUING and LOCH DUICH . . .	A straight line drawn due south, true meridian, from Scart point on the north shore to the mainland on the south.	13th June 1865.
LOCH ROAG (Lewis) .	A straight line drawn from Aird-Lamie-sheadar on the east to Sgeir-na-ha-on Chaorach on the west; also from Camus Ennaidh on the east to Eala Sheadha on the west.	4th Aug. 1865.
LUCE . . .	A straight line drawn from a point on the shore at high water mark on the east side of the river 650 yards south of Stair Haven Pier to a point on the shore at high water mark on the west side of the river 1300 yards south-west from Ringdon point.	6th Jan. 1865.
LOSSIE . . .	A straight line to be drawn from the North Pier Head to a point at low water of equinoctial spring tides 200 yards, measured in a straight line, east of the South Pier of the Old Harbour, and thence continued by a straight line to the nearest point of the shore at high water mark of equinoctial spring tides.	11th Mar. 1865.
LUSSA (Mull) and River from LOCH UISK to LOCH BUY.	As regards the River LUSSA, a straight line between the most projecting points of the heads of the mouth of Loch	4th Aug. 1865.

Names of Rivers.	*Limits of Estuary.*	*Date from which Bye-law to take effect.*
Lussa (Mull), and river from Loch Uisk to Loch Buy—*cont.*	Spelve. As regards Loch Uisk River, a line north-west and south-east through the outer side of Mor Island.	
Moidart and Shiel	A straight line drawn from Farquhar point on the south shore to the south-west point of Eilean Shona, and a straight line drawn from north-west point of Eilean Shona to the nearest point of the mainland on the north.	11th Mar. 1865.
Morar . . .	A straight line drawn from Bonan Caraidich on the north side of the river to the outermost point of Fraoch Eilean on the south (Admiralty Chart).	11th Mar. 1865.
Nairn . . .	A portion of a circle of 400 yards radius, to be drawn from a centre placed mid-channel in the river where it joins the sea at low water of equinoctial spring tides, and continued shorewards by tangents to the circle drawn to the nearest points of the shore of the respective sides of the river at high water mark, also of equinoctial spring tides.	7th Mar. 1865.
Naver and Borgie .	A straight line drawn from Aird-in-iaskich on east to Claishaidie on west. (Burnett and Scott's County Map).	11th Mar. 1865.
Ness . . .	A straight line drawn due south-east, true meridian, from the centre of the Three Burns to the southern shore, thus cutting the Black Buoy as at present placed on the north end of the Whiten Ness sands.	7th Mar. 1865.
Nell, Feochan, and Euchar (Loch Feochan) . . .	From Minard point on the north to eastern extremity of Barnacaryu Bay on the south.	11th Mar. 1865.
Nith, Annan, and Esk	A straight line drawn from the Hotel of Skemberness in the parish of Abbey Holme in the county of Cumberland to the large house at Carset House of Arbigland in the Stewartry of Kirkcudbright.	7th Mar. 1865.
Ormsary and Loch Head (Loch Killisport) and Stornoway . . .	From Knap point on the north, a straight line thence in the direction of Kilmaluag on the south. Stornoway, the two extreme projecting points of Stornoway Bay, namely, about half-way between Lergnahunseon and Point Gallon on the north, and between Lergnahunseon and Ardpatrick point on the south.	4th Aug. 1865.

Names of Rivers.	*Limits of Estuary.*	*Date from which Bye-law to take effect.*
PENNYGOWN or GLENFORSA and AROS (Mull) . . .	A straight line from Alasaid Head on the west on the direction of the burying ground to the projecting point north-east of the mouth of Pennygown river on the east.	4th Aug. 1865.
RUEL . . .	From Runin-a-Crotch point on the east, line thence due west.	11th Mar. 1865.
RESORT . . .	On the north Ru Carnach (Admiralty Chart), thence to the seaward side of Greine Sgeir Island, and on the north-west point of the promontory on which the hill or mountain Meilein is situated.	4th Aug. 1865.
SANDA . . .	*See* Lochy.	—
SCADDLE . . .	*See* Lochy.	—
SHIEL (Loch Shiel) .	*See* Moidart.	—
SLIGACHAN, BROADFORD, and PORTREE	As regards the River SLIGACHAN, a straight line from Bal-na-Roinn point at low water on north to Ru-an-Fhaing on the south. As regards the River BROADFORD, a straight line from Mr Mackinnon's pier on the north to the cottage on the beach a little to the eastward of the lime kiln and pier on the south. As regards the River PORTREE, Skin Voire on the north to the point on the south lying due south-east.	4th Aug. 1865.
SNIZORT . . .	As regards the River SNIZORT, a straight line from Lyndale point on the west to Aird-nan-Eirach on the east. As regards the Rivers ORLEY and OZE, Loch Bracadale, a straight line from the most projecting point between Callbost and Eabost on the east to the most projecting point between Loch Caroy and Loch Roag on the west. As regards the River DRYNOCH, Loch Harport, a straight line from the projecting point between Struanmore and Struanbeg on the north to the projecting point north of Dunard kirk on the south.	4th Aug. 1865.
SOLWAY . . .	*See* end of Schedule.	—
SPEY . . .	A portion of a circle of 400 yards radius, to be drawn from a centre placed mid-channel in the river where it joins the sea at low water of equinoctial spring tides, and continued shorewards by tan-	7th Mar. 1865.

Names of Rivers.	*Limits of Estuary.*	*Date from which Bye-law to take effect.*
SPEY—*continued.*	gents to the circle drawn to the nearest points of the shore of the respective sides of the river at high water mark, also of equinoctial spring tides.	
STINCHAR . .	A portion of a circle of 350 yards radius drawn from a centre placed mid-channel of the river where it joins the sea at low water of equinoctial spring tides, and continued by tangents to the circle drawn at right angles with the shore.	22d April 1864.
STORNOWAY . .	*See* Creed.	—
STRATHY	A straight line drawn across Strathy Bay from Point South of Geo Ghoulan on the west to north-west point, Balligill head on east.	11th Mar. 1865.
THURSO . . .	A portion of a circle of 400 yards radius, drawn from a centre placed mid-channel at the line of low water of equinoctial spring tides, and continued to the shore at high water by tangents, that on the east being to a point 500 yards north-east of Thurso Castle, and that on the west being in the direction of the toll house.	11th Mar. 1865.
TONG or THUNG .	*See* Greiss.	—
TORRIDON, BALGAY, and SHIELDAG .	A straight line drawn across the narrows between Loch Shieldag and Outer Loch Torridon, where Diobaig point and Ru Ardtishlic most nearly approach each other.	11th Mar. 1865.
UGIE . . .	A portion of a circle of 200 yards radius, to be drawn from a centre placed mid-channel in the river where it joins the sea at low water of equinoctial spring tides, and continued shorewards by tangents to the circle drawn to the nearest points of the shore of the respective sides of the river at high water mark, also of equinoctial spring tides.	7th Mar. 1865.
ULLAPOOL . .	*See* Broom.	—
URR . . .	A straight line drawn from Balcarry Point on the west, through the outside of Hestan Island, to the eastern extremity of Gutcher's Island at low water, and thence inshore to high water mark at the projecting point, distant one mile from Castle Hill point.	13th June 1865.

Names of Rivers.	*Limits of Estuary.*	*Date from which Bye-law to take effect.*
Wick . . .	The line of the breakwater now in course of construction, and a straight line drawn due north from the outer end of the said breakwater to the north shore.	11th Mar. 1865.
Ythan . . .	A portion of a circle of 300 yards radius to be drawn from a centre placed mid-channel in the river where it joins the sea at low water of equinoctial spring tides, and continued shorewards by tangents to the circle drawn to the nearest points of the shore of the respective sides of the river at high water mark, also of equinoctial spring tides.	22d April 1864.

25 & 26 Vict. c. 97.

WE, the Commissioners appointed under the said Act, and empowered thereby 'to fix, for the purposes of this Act, the limits 'of the Solway Firth, having regard to an Act passed in the forty-'fourth year of the reign of His Majesty King George the Third, chap. 'forty-five,' do hereby fix the limit dividing the Solway Firth from the sea to be a straight line drawn from the Mull of Galloway in the county of Wigtown to Hodbarrow point in the parish of Millam in the county of Cumberland.

Given under our hands this 22d day of January 1864.

Wm. J. Ffennell,
James Leslie, } *Commissioners.*

Fisheries Department, Home Office.

Approved,
Whitehall, 9th April 1864.
G. Grey.

(C.)

BYE-LAW.

25 & 26 VICT. c. 97.
26 & 27 VICT. c. 50, and
27 & 28 VICT. c. 118.

'Acts to regulate and amend the Law respecting the Salmon Fisheries of Scotland.'

District of the river ADD.

WE, the Commissioners appointed under the said Acts, and empowered thereby 'to determine, subject to the provisions of 'this [the first recited] Act, at what dates the annual close time for 'every district shall commence and terminate, and at what periods 'subsequent to the commencement and prior to the termination of the 'annual close time it shall be lawful to fish for and take salmon with 'the rod and line,' do hereby determine that the annual close time for the district of the river Add shall commence on the 1st day of September and terminate on the 15th day of February, both days inclusive, and that it shall be lawful to fish for and to take salmon with the rod and line from the 1st day of September to the 31st day of October, both days inclusive.

WM. J. FFENNELL,
FRED. EDEN,
JAMES LESLIE,
} *Commissioners.*

Fisheries Department, Home Office,
11th day of January 1864.

Approved,
Whitehall, 19th day of April 1864,
G. GREY.

(This bye-law to take effect from the 20th day of May 1864.)

The same bye-law shall apply to the several rivers, according to the times, and take effect from the dates under mentioned, respectively.

Names of Rivers.	*Annual Close Time.*	*Extension of Time for Rod Fishing.*	*Date from which Bye-law to take effect.*
ALINE	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 31.	11th Mar. 1865.
ALNESS	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 31.	14th Mar. 1865.
ANNAN	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 31.	13th June 1865.

Names of Rivers.	*Annual Close Time.*	*Extension of Time for Rod Fishing.*	*Date from which Bye-law to take effect.*
Applecross	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 31.	11th Mar. 1865.
Armisdale *in Loch Hourn* .	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 31.	11th Mar. 1865.
Awe	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 31.	11th Oct. 1864.
Aylort (*Kinloch*) . . .	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 31.	11th Mar. 1865.
Ayr	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 31.	13th June 1865.
Baa and Glencoilleadar .	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 31.	4th Aug. 1865.
Badachro and Kerry *in Gairloch*	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 31.	13th June 1865.
Balgay and Shieldag . .	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 31.	11th Mar. 1865.
Beauly	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 15.	7th Mar. 1865.
Berriedale	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 31.	29th Jan. 1864.
Bervie	From Sept. 10 to Feb. 24.	From Sept. 10 to Oct. 31.	29th Jan. 1864.
Bladenoch	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 31.	11th Mar. 1865.
Broom	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 31.	13th June 1865.
Brora	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 31.	11th Mar. 1865.
Carradale in Cantyre . .	From Sept. 10 to Feb. 24.	From Sept. 10 to Oct. 31.	26th Jan. 1866.
Carron	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 31.	11th Mar. 1865.
Clyde and Leven . . .	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 31.	7th Mar. 1865.
Conon	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 31	7th Mar. 1865.
Cree	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 31.	11th Mar. 1865.
Creed or Stornoway, and Laxay (*Lewis*) . . .	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 31.	4th Aug. 1865.
Creran (*Loch Creran*). .	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 31.	11th Mar. 1865.
Crowe and Shiel (*Loch Duich*)	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 31.	13th June 1865.
Dee (*Aberdeenshire*) . .	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 31.	7th Mar. 1865.
Dee (*Kirkcudbright*) . .	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 31.	19th April 1864.
Deveron	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 31.	7th Mar. 1865.
Don	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 31.	29th Jan. 1864.
Doon	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 31.	14th Mar. 1865.
Drummachloy or Glenmore (*Isle of Bute*) . . .	From Sept. 1 to Feb. 15.	From Sept. 1 to Oct. 15.	5th May 1868.

Names of Rivers.	*Annual Close Time.*	*Extension of Time for Rod Fishing.*	*Date from which Bye-law to take effect.*
DUNBEATH	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 15.	11th Mar. 1865.
ECKAIG	From Sept. 1 to Feb. 15.	From Sept. 1 to Oct. 31.	20th May 1864.
ESK, NORTH	From Sept. 1 to Feb. 15.	From Sept. 1 to Oct. 31.	14th Mar. 1865.
ESK, SOUTH	From Sept. 1 to Feb. 15.	From Sept. 1 to Oct. 31.	1st Mar. 1864.
EWE	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 31.	11th Mar. 1865.
FINDHORN	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 10.	7th Mar. 1865.
FLEET (*Sutherlandshire*)	From Aug. 27 to Feb. 10,	From Aug. 27 to Oct. 31.	11th Mar. 1865.
FLEET (*Kirkcudbright*)	From Sept. 10 to Feb. 24.	From Sept. 10 to Oct. 31.	20th May 1864.
FORSS	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 31.	29th Jan. 1864.
FORTH	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 15.	14th Mar. 1865.
FYNE, SHIRA, and ARAY (*Loch Fyne*)	From Sept. 1 to Feb. 15.	From Sept. 1 to Oct. 31.	11th Mar. 1865.
GIRVAN	From Sept. 10 to Feb. 24.	From Sept. 10 to Oct. 31.	29th Jan. 1864.
GLENELG	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 31.	11th Mar. 1865.
GOUR	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 31.	11th Mar. 1865.
GREISS, LAXDALE, or THUNGA	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 31.	4th Aug. 1865.
GRUDIE or DIONARD	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 31.	11th Mar. 1865.
GRUINARD and LITTLE GRUINARD	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 31.	11th Mar. 1865.
HALLADALE	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 31.	11th Mar. 1865.
HELMSDALE	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 31.	11th Mar. 1865.
HOPE and POLLA, or STRATHBEG	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 31.	11th Mar. 1865.
INCHARD	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 31.	11th Mar. 1865.
INNER *in Jura*	From Sept. 10 to Feb. 24.	From Sept. 10 to Oct. 31.	26th Jan. 1866.
INVER	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 31.	11th Mar. 1865.
IORSA *in Arran*	From Sept. 10 to Feb. 24.	From Sept. 10 to Oct. 31.	26th Jan. 1866.
IRVINE and GARNOCH	From Sept. 10 to Feb. 24.	From Sept. 10 to Oct. 31.	11th Mar. 1865.
KENNART	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 31.	11th Mar. 1865.
KILCHOAN or INVERIE (*Loch Nevis*)	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 31.	11th Mar. 1865.
KINLOCH (*Kyle of Tongue*)	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 31.	11th Mar. 1865.

Names of Rivers.	*Annual Close Time.*	*Extension of Time for Rod Fishing.*	*Date from which Bye-law to take effect.*
KIRKAIG	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 31.	11th Mar. 1865.
KISHORN	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 31.	11th Mar. 1865.
KYLE of SUTHERLAND . .	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 15.	7th Mar. 1865.
LAGGAN and SORN *in Islay* .	From Sept. 10 to Feb. 24.	From Sept. 10 to Oct. 31.	26th Jan. 1866.
LAXFORD	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 31.	11th Mar. 1865.
LEVEN	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 31.	11th Mar. 1865.
LITTLE LOCH BROOM . .	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 31.	11th Mar. 1865.
LOCHY	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 31.	15th Nov. 1864.
LOCH DUICH	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 31.	13th June 1865.
LOCH LUING	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 31.	13th June 1865.
LOCH ROAG	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 31.	4th Aug. 1865.
LOSSIE	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 15.	11th Mar. 1865.
LUCE	From Sept. 10 to Feb. 24.	From Sept. 10 to Oct. 31.	7th Mar. 1865.
LUSSA (*Mull*)	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 31.	4th Aug. 1865.
MOIDART	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 31.	11th Mar. 1865.
MORAR	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 31.	11th Mar. 1865.
NAIRN	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 15.	7th Mar. 1865.
NAVER and BORGIE . .	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 31.	11th Mar. 1865.
NELL, FEOCHAN, and EUCHAR (*Loch Feochan*) . . .	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 31.	11th Mar. 1865.
NESS	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 15.	7th Mar. 1865.
NITH	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 31.	7th Mar. 1865.
ORMSARY (*L. Killisport*), LOCH HEAD, and STORNOWAY (*Mull*)	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 31.	4th Aug. 1865.
PENNYGOWN or GLENFORSA, and AROS	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 31.	4th Aug. 1865.
RESORT	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 31.	4th Aug. 1865.
RUEL	From Sept. 1 to Feb. 15.	From Sept. 1 to Oct. 31.	11th Mar. 1865.
SANDA	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 31.	11th Mar. 1865.
SCADDLE	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 31.	11th Mar. 1865.
SHIEL (*Loch Shiel*) . . .	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 31.	11th Mar. 1865.

Names of Rivers.	*Annual Close Time.*	*Extension of Time for Rod Fishing.*	*Date from which Bye-law to take effect.*
Sligachan, Broadford, and Portree.	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 31.	4th Aug. 1865.
Snizort, Orley, Oze, and Drynoch.	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 31.	4th Aug. 1865.
Spey	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 15.	7th Mar. 1865.
Stinchar	From Sept. 10 to Feb. 24.	From Sept. 10 to Oct. 31.	29th Jan. 1864.
Stornoway	*See* Creed.	—	—
Strathy	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 31.	11th Mar. 1865.
Tay	From Aug. 21 to Feb. 4.	From Aug. 21 to Oct. 10.	28th July 1865.
Thurso	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 15.	11th Mar. 1865.
Torridon, Balgay, and Shieldag.	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 31.	11th Mar. 1865.
Ugie	From Sept. 10 to Feb. 24.	From Sept. 10 to Oct. 31.	7th Mar. 1865.
Ullapool (*Loch Broom*) .	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 31.	13th June 1865.
Urr	From Sept. 10 to Feb. 24.	From Sept. 10 to Oct. 31.	29th Jan. 1864.
Wick	From Aug. 27 to Feb. 10.	From Aug. 27 to Oct. 31.	11th Mar. 1865.
Ythan	From Sept. 10 to Feb. 24.	From Sept. 10 to Oct. 31.	29th Jan. 1864.

(D.)

Bye-law.

25 & 26 Vict. c. 97.
26 & 27 Vict. c. 50, and
27 & 28 Vict. c. 118.

'Acts to regulate and amend the Law respecting the Salmon Fisheries of Scotland.'

District of the River Add.

WE, the Commissioners appointed under the said Acts, and empowered thereby 'to make general regulations with respect to 'the due observance of the weekly close time,' do hereby make the following regulations with respect to the due observance of the weekly close time in the said district; namely,

1. That in each and every stake weir or stake net a clear open-

ing of at least four feet in width from top to bottom shall be made and kept free from obstruction in each and every pouch, trap, or chamber of same.

2. That the pouches, traps, or chambers of each and every fly net shall be either raised and tied up to the upper ropes of same, or lowered and tied to the lower ropes, so as effectually to prevent the capture or obstruction of salmon.
3. That the netting of the leader of each and every bag net shall be entirely removed, and taken out of the water.

WM. J. FFENNELL,
FRED. EDEN,
JAMES LESLIE,
} *Commissioners.*

Fisheries Department, Home Office,
11th day of January 1864.

Approved,
Whitehall, 19th April 1864.
G. GREY.

(This Bye-law to take effect from 20th day of May 1864.)

The same Bye-law shall apply to the rivers and take effect from the dates under-mentioned respectively.

Names of Rivers.	*Date from which Bye-law to take effect.*	*Names of Rivers.*	*Date from which Bye-law to take effect.*
ALINE	Mar. 11, 1865.	CREED or STORNOWAY and LAXAY	Aug. 4, 1865.
ALNESS	Mar. 14, 1865.	CRERAN	Mar. 11, 1865.
ANNAN	June 13, 1865.	CROWE and SHIEL (*Loch Duich*)	June 13, 1865.
APPLECROSS	Mar. 11, 1865.	DEE (*Aberdeenshire*)	Mar. 7, 1865.
ARNISDALE (*in Loch Hourn*)	Mar. 11, 1865.	DEE (*Kirkcudbright*)	April 29, 1864.
AWE	May 20, 1864.	DEVERON	Mar. 7, 1865.
AYLORT (*Kinloch*)	Mar. 11, 1865.	DON	April 29, 1864.
AYR	June 13, 1865.	DOON	Mar. 14, 1865.
BAA and GLENCOIL-LEADAR	Aug. 4, 1865.	DRUMMACHLOY or GLENMORE (*Island of Bute*)	May 5, 1868.
BADACHRO and KERRY (*in Gairloch*)	June 13, 1865.	DRYNOCH (*in Loch Harport*)	Aug. 4, 1865.
BALGAY and SHIELDAG	Mar. 11, 1865.	DUNBEATH	Mar. 11, 1865.
BEAULY	Mar. 7, 1865.	ECKAIG	May 20, 1864.
BERRIEDALE	April 29, 1864.	ESK, NORTH	Mar. 14, 1865.
BERVIE	April 29, 1864.	ESK, SOUTH	April 29, 1864.
BLADENOCH	Mar. 11, 1865.	EWE	Mar. 11, 1865.
BROOM	June 13, 1865.	FINDHORN	Mar. 7, 1865.
BRORA	Mar. 11, 1865.	FLEET (*Sutherlandshire*)	Mar. 11, 1865.
CARRADALE (*in Cantyre*)	Jan. 26, 1866.	FLEET (*Kirkcudbright*)	April 29, 1864.
CARRON	Mar. 11, 1865.	FORSS	April 29, 1864.
CLYDE and LEVEN	Mar. 7, 1865.	FORTH	Mar. 14, 1865.
CONON	Mar. 7, 1865.		
CREE	Mar. 11, 1865.		

Names of Rivers.	*Dates from which Bye-law to take effect.*
Fyne, Shira, and Aray (*Loch Fyne*) .	Mar. 11, 1865.
Girvan . . .	April 29, 1864.
Glenelg . . .	Mar. 11, 1865.
Gour . . .	Mar. 11, 1865.
Greiss (*Laxdale and Tong or Thunga*) .	Aug. 4, 1865.
Gruidie or Dionard	Mar. 11, 1865.
Gruinard and Little Gruinard . .	Mar. 11, 1865.
Halladale . .	Mar. 11, 1865.
Helmsdale . .	Mar. 11, 1865.
Hope and Polla or Strathbeg . .	Mar. 11, 1865.
Inchard . . .	Mar. 11, 1865.
Inner (*in Jura*) .	Jan. 26, 1866.
Inver . . .	Mar. 11, 1865.
Iorsa (*in Arran*) .	Jan. 26, 1866.
Irvine and Garnoch	Mar. 11, 1865.
Kennart . . .	Mar. 11, 1865.
Kilchoan or Inverie (*Loch Nevis*) . .	Mar. 11, 1865.
Kinloch (*Kyle of Tongue*) . . .	Mar. 11, 1865.
Kirkaig . . .	Mar. 11, 1865.
Kishorn . . .	Mar. 11, 1865.
Kyle or Sutherland	Mar. 7, 1865.
Laggan and Sorn (*in Islay*) . . .	Jan. 26, 1866.
Laxford . . .	Mar. 11, 1865.
Leven . . .	Mar. 11, 1865.
Little Loch Broom	June 13, 1865.
Lochy . . .	Aug. 4, 1865.
Loch Duich . .	June 13, 1865.
Loch Luing . .	June 13, 1865.
Loch Roag (*Lewis*), Rivers Blackwater, Grimersta, and Morsgail . .	Aug. 4, 1865.
Lossie . . .	Mar. 11, 1865.
Luce . . .	Mar. 7, 1865.
Lussa (*Mull*), and River, Loch Uisk to Loch Buy . .	Aug. 4, 1865.
Moidart . . .	Mar. 11, 1865.
Morar . . .	Mar. 11, 1865.
Nairn . . .	Mar. 7, 1865.
Naver and Borgie .	Mar. 11, 1865.
Nell, Feochan, and Euchar (*Loch Feochan*) . . .	Mar. 11, 1865.
Ness . . .	Mar. 7, 1865.
Nith . . .	Mar. 7, 1865.
Ormsary (*Loch Killisport*), Loch Head River, and Stornoway (*Mull*) . .	Aug. 4, 1865.
Pennygown or Glenforsa, and Aros .	Aug. 4, 1865.
Resort . . .	Aug. 4, 1865.
Ruel . . .	Mar. 11, 1865.
Sanda . . .	Mar. 11, 1865.
Scaddle . . .	Mar. 11, 1865.
Shiel, Loch Shiel .	Mar. 11, 1865.
Sligachan, Broadford, and Portree	Aug. 4, 1865.
Snizort, Orley, Oze (and *Loch Bracadale*), and Drynoch (*Loch Harport*) .	Aug. 4, 1865.
Spey . . .	Mar. 7, 1865.
Stinchar . .	April 29, 1864.
Strathy . . .	Mar. 11, 1865.
Tay	April 29, 1864.
Thurso . . .	Mar. 11, 1865.
Torridon, Balgay, and Shieldag .	Mar. 11, 1865.
Ugie . . .	Mar. 7, 1865.
Ullapool . .	June 13, 1865.
Urr	April 29, 1864.
Wick . . .	Mar. 11, 1865.
Ythan . . .	April 29, 1864.

(E.)

BYE-LAW.

25 & 26 VICT. c. 97.
26 & 27 VICT. c. 50.
27 & 28 VICT. c. 118.

'Acts to regulate and amend the Law respecting the Salmon Fisheries of Scotland.'

District of the River ADD.

WE, the Commissioners appointed under the said Acts, and empowered thereby 'to make General Regulations with respect to 'the Meshes of Nets,' to be used for the capture of salmon, do hereby make the following regulations with respect to the meshes of nets, for the district of the river Add:—

That no net shall be used for the capture of salmon the meshes whereof shall be under one inch and three quarters in extension, from knot to knot, measured on each side of the square, or seven inches measured round each mesh when wet; and the placing two or more nets behind or near to each other in such manner as to practically diminish the mesh of the nets used, or the covering the nets used with canvas, or the using any other artifice so as to evade the provisions of the regulations with respect to the meshes of nets, shall be deemed to be an act in contravention of this bye-law.

WM. J. FFENNELL,
FRED. EDEN,
JAMES LESLIE,
} *Commissioners.*

Fisheries Department, Home Office,
11th day of January 1864.

Approved,
G. GREY.
Whitehall, 19th April 1864.

(This bye-law to take effect from the 20th day of May 1864.)

The same bye-law shall apply to the rivers and take effect from the dates under mentioned respectively.

Names of Rivers.	*Date from which Bye-law to take effect.*	*Names of Rivers.*	*Date from which Bye-law to take effect.*
ALINE . . .	Mar. 11, 1865.	ARNISDALE (*in Loch Hourn*) . . .	Mar. 11, 1865.
ALNESS . . .	Mar. 14, 1865.	AWE	May 20, 1864.
ANNAN . . .	June 13, 1865.	AYLORT (*Kinloch*) .	Mar. 11, 1865.
APPLECROSS . .	Mar. 11, 1865.		

Names of Rivers.	Date from which Bye-law to take effect.
Ayr	June 13, 1865.
Baa and Glencoil-leadar	Aug. 4, 1865.
Badachro and Kerry *in Gairloch*	June 13, 1865.
Balgay and Shieldag	Mar. 11, 1865.
Beauly	Mar. 7, 1865.
Berriedale	May 10, 1864.
Bervie	May 10, 1864.
Bladenoch	Mar. 11, 1865.
Broom	June 13, 1865.
Brora	Mar. 11, 1865.
Carradale *in Cantyre*	Jan. 26, 1866.
Carron	Mar. 11, 1865.
Clyde and Leven	Mar. 7, 1865.
Conon	Mar. 7, 1865.
Cree	Mar. 11, 1865.
Creed or Stornoway and Laxay	Aug. 4, 1865.
Creran	Mar. 11, 1865.
Crowe and Shiel (*Loch Duich*)	June 13, 1865.
Dee (*Aberdeenshire*)	Mar. 7, 1865,
Dee (*Kirkcudbright*)	May 10, 1864.
Deveron	Mar. 7, 1865.
Don	May 10, 1864.
Doon	Mar. 14, 1865.
Drummachloy or Glenmore (*I. of Bute*)	May 5, 1868.
Drynoch *in Loch Harport*	Aug. 4, 1865.
Dunbeath	Mar. 11, 1865.
Eckaig	May 20, 1864.
Esk, North	Mar. 14, 1865.
Esk, South	May 10, 1864.
Ewe	Mar. 11, 1865.
Findhorn	Mar. 7, 1865.
Fleet (*Sutherlandshire*)	Mar. 11, 1865.
Fleet (*Kirkcudbright*)	May 10, 1864.
Forss	May 10, 1864.
Forth	Mar. 14, 1865.
Fyne, Shira, and Aray, *Loch Fyne*	Mar. 11, 1865.
Girvan	May 10, 1864.
Glenelg	Mar. 11, 1865.
Gour	Mar. 11, 1865.
Greiss (*Laxdale, and Tong or Thunga*)	Aug. 4, 1865.
Gruidie or Dionard	Mar. 11, 1865.
Gruinard and Little Gruinard	Mar. 11, 1865.
Halladale	Mar. 11, 1865.
Helmsdale	Mar. 11, 1865.
Hope and Polla, or Strathbeg	Mar. 11, 1865.
Inchard	Mar. 11, 1865.
Inner *in Jura*	Jan. 26, 1866.
Inver	Mar. 11, 1865.
Iorsa *in Arran*	Jan. 26, 1866.
Irvine and Garnoch	Mar. 11, 1865.
Kennart	Mar. 11, 1865.
Kilcholan or Inverie (*Loch Nevis*)	Mar. 11, 1865.
Kinlock (*Kyle of Tongue*)	Mar. 11, 1865.
Kirkaig	Mar. 11, 1865.
Kishorn	Mar. 11, 1865.
Kyle of Sutherland	Mar. 7, 1865.
Laggan and Sorn *in Islay*	Jan. 26, 1866.
Laxford	Mar. 11, 1865.
Leven	Mar. 11, 1865.
Little Loch Broom	June 13, 1865.
Lochy	Aug. 4, 1865.
Loch Duich	June 13, 1865.
Loch Luing	June 13, 1865.
Loch Roag (*Lewis*), Rivers Blackwater, Grimersta, and Morsgail	Aug. 4, 1865.
Lossie	Mar. 11, 1865.
Luce	Mar. 7, 1865.
Lussa (*Mull*) and River, Loch Uisk to Loch Buy	Aug. 4, 1865.
Moidart	Mar. 11, 1865.
Morar	Mar. 11, 1865.
Nairn	Mar. 7, 1865.
Naver and Borgie	Mar. 11, 1865.
Nell, Feochan, and Euchar (*L. Feochan*)	Mar. 11, 1865.
Ness	Mar. 7, 1865.
Nith	Mar. 7, 1865.
Ormsary (*Loch Killisport*), Loch Head River and Stornoway (*Mull*)	Aug. 4, 1865.
Pennygown or Glenforsa, and Aros	Aug. 4, 1865.
Resort	Aug. 4, 1865.
Ruel	Mar. 11, 1865.
Sanda	Mar. 11, 1865.
Scaddle	Mar. 11, 1865.
Shiel, Loch Shiel	Mar. 11, 1865.
Sligachan, Broadford, and Portree.	Aug. 4, 1855.
Snizort, Orley, Oze (*and Loch Bracadale*), and Drynoch (*Loch Harport*)	Aug. 4, 1865.

Names of Rivers.	*Date from which Bye-law to take effect.*	*Names of Rivers.*	*Date from which Bye-law to take effect.*
Spey . . .	Mar. 7, 1865.	Ugie . . .	Mar. 7, 1865.
Stinchar . . .	May 10, 1864.	Ullapool . . .	June 13, 1865.
Strathy . . .	Mar. 11, 1865.	Urr . . .	May 10, 1864.
Tay . . .	May 10, 1864.	Wick . . .	Mar. 11, 1865.
Thurso . . .	Mar. 11, 1865.	Ythan . . .	May 10, 1864.
Torridon, Balgay, and Shieldag .	Mar. 11, 1865.		

(F.)

Bye-law.

25 & 26 Vict. c. 97.
26 & 27 Vict. c. 50.
27 & 28 Vict. c. 118.

'Acts to regulate and amend the Law respecting the Salmon Fisheries of Scotland.'

WE, the Commissioners appointed under the said Acts, and empowered thereby 'to make General Regulations with respect to 'the Construction and Use of Cruives,' do hereby make the following general regulations with respect to the construction and use of cruives:—

I. The upper surface of the sill of each cruive shall be not higher than twelve inches above the natural bed of the river where the cruive is placed, and in the event of the sill being placed any higher than the natural bed of the river there must be a paved floor or apron to it down stream, at least as wide as the cruive, having its lower end not higher than the natural level of the river, and having a slope not steeper than one in six; and otherwise the cruives shall be so constructed as to afford a ready and easy passage for the fish during the annual and weekly close times.

II. No cruive shall be less at any part of it than four feet broad in the clear; provided that where an upright post is used to support the cruive, thereby dividing the width into two parts, the aggregate width exclusive of such post shall not be less than four feet.

III. The hecks or rails and inscales shall be capable of being removed from the cruive, and shall be removed during the annual close time. During the weekly close time the hecks or rails shall be removed, and the inscales shall either be removed or kept open for the space of four feet.

IV. The bars of the upper hecks or rails shall be placed perpendicularly, not less than three inches apart, and they shall not be more than two inches thick, and not more than four inches broad in the up and down way of the stream, and they shall have their edges rounded off, so that only $1\frac{1}{2}$ inches in breadth of the whole thickness of two inches shall remain in the side of the hecks or rails in the up and down way of the stream.

V. The bars of the inscales shall not be of larger dimensions than those of the hecks or rails, and they shall not be less than two inches apart.

VI. Each side or half of the inscales shall not be less than three feet long for a cruive four feet wide in the clear, and shall be longer in the same proportion to any additional width of cruive. They shall be constructed so that the up stream ends cannot and shall not at any time approach nearer to each other than five inches.

VII. No net or other contrivance whatever shall be placed or used on or at any cruive, or structure connected with a cruive, for the purpose of catching fish, or for preventing their entry into or passing through the same; nor shall any device be employed to scare, deter, or obstruct fish from entering into or passing through any such cruive. But, notwithstanding anything herein contained, it shall be lawful to place a canvas cloth or a wooden blind or blinds over the heck or hecks of a cruive whilst the fish are being taken out of it, provided such cloth, blind or blinds, be not applied longer than fifteen minutes at a time, or oftener than six times in the course of twenty-four hours, and that when there are more cruives than one at the same dam only one cruive shall be covered by the cloth or blinds at the same time.

VIII. No cruive shall be so constructed, inclosed, roofed, or built over, or in any other manner hidden or fenced in, as to prevent persons duly authorized from inspecting the same at all times, and ascertaining whether the law is being duly complied with.

IX. No cruive shall be so altered as to create a greater obstruction to the free passage of fish than at present exists.

WM. J. FFENNELL,
FRED. EDEN,
JAMES LESLIE,
} *Commissioners.*

Fisheries Department, Home Office,
18th day of April 1865.

Approved,
G. GREY.

Whitehall, 19th July 1865.

(This bye-law to take effect from the 28th July 1865.)

(G.)

Bye-law.

25 & 26 Vict. c. 97.
26 & 27 Vict. c. 50.
27 & 28 Vict. c. 118.

'Acts to regulate and amend the Law respecting the Salmon Fisheries of Scotland.'

WE, the Commissioners appointed under the said Acts, and empowered thereby 'to make general regulations with respect to 'the construction and alteration of mill dams or lades, or water 'wheels, so as to afford a reasonable means for the passage of salmon,' do hereby make the following general regulations with respect to the construction and use of mill dams or lades, or water wheels:—

1. Every new dam, and every portion of any dam that may require to be renewed or repaired after this time, shall be made and maintained water-tight, or as nearly so as possible, so that no water that can reasonably be prevented shall run through the dam; but all water not taken into the lade for the use of the mills or other lawful purpose shall be made to flow over the dam as fully as may be practicable.

2. There shall be a sluice or sluices at the intake of every mill lade. No water shall, with the exception hereinafter stated, be allowed to enter any mill lade beyond the quantity required for the use of the water wheel or wheels of any one fall on that lade, or for other lawful purpose in the lade; that is to say, no water shall be allowed to escape from any lade into the river by means of any bye-wash or overflow, but all water not required for the uses aforesaid shall be made to flow over the dam into the river as far as may be practicable.

At the option of the millers or manufacturers, this provision may be carried out either by shutting the sluice or sluices at the intake of the lade, or by raising the banks of the lade to a height that will prevent an overflow of water from the lade when the sluice at the wheel and the bye-wash sluice hereinafter mentioned are both kept shut. Provided always, that the said bye-law shall not apply to millers or manufacturers when taking measures necessary for the protection of their premises during heavy floods, or when rivers are cumbered with ice, or while necessary repairs are being executed on any emergency, provided that nothing be omitted or done unnecessarily to defeat the objects of this bye-law. Furthermore, in all cases when the intake sluice is more than 300 yards from the water wheel, it shall not be imperative to shut the intake sluice, or to keep the bye-wash sluice shut,

during ordinary meal hours, or during any stoppage of the wheel not exceeding an hour at a time.

3. At the intake of every lade there shall be placed and constantly kept a heck or grating for each opening, or one embracing the whole openings, the bars to be not more than three inches apart, if horizontal, and not more than two inches if vertical.

4. A similar heck or grating shall be placed and constantly kept across the lade or troughs immediately above the entrance to each mill wheel.

5. A similar heck or grating shall be placed and constantly kept across the lower end of each tail lade at its entrance into the main river.

NOTE.—To prevent any obstruction to the flow of the water by the hecks or gratings in the lades, it is recommended that the lade should be increased in width where the hecks are placed, and that the heck, instead of being in a straight line across, should be curved or pointed up or down stream, and thereby increased in length, so that the aggregate of the openings between the bars shall exceed the sectional area (or waterway) of the lade, and thus compensate for the space occupied by the bars.

6. There shall be a bye-wash sluice placed as near as practicable above each water wheel in the embankment of the lade, of not less than three feet in width, with its sill as low as the bottom of the lade, and the said sluice shall be raised to a height sufficient to allow the smolts to descend for at least five but not exceeding eight hours each week from the 15th March to the 1st July, not more than six days intervening between each time of opening.

There shall be a salmon pass or ladder on the down stream face of every dam, weir, or cauld, capable of affording a free passage for the ascending fish at all times when there is water enough in the river to supply the ladder. The width shall not be less than four feet in the clear in rivers of less than 100 feet in breadth at the site of the dam, nor less than five feet in breadth in rivers of less than 200 feet and more than 100 feet in breadth as aforesaid, nor less than six feet in breadth in rivers of more than 200 feet in breadth as aforesaid; the upper sill shall be not less than six inches below the lowest part of the crest of the dam for the whole width of the ladder; the inclination shall in no case be steeper than five horizontal to one perpendicular, but, wherever practicable, shall be seven or eight horizontal to one perpendicular, and in all cases shall be provided with breaks or stops placed at suitable intervals, so as to lessen the velocity of the current sufficiently to allow the fish to ascend without difficulty.

The foot of the ladder shall be placed where there is most running water, and with the best lead for the fish to approach it; and if the ladder should project beyond the toe of the dam,

there shall be an apron of stone formed to the dam, extending as far down the river as the entrance to the pass or ladder, and extending throughout the whole length of the dam at either side of the ladder, and on a high enough level to prevent their being any pool in the river, or sufficient depth of water farther up than the entrance to the said pass or ladder, by which the fish might be induced to remain there obstructed in their ascent, and not be led to the ladder.

NOTE.—The Commissioners would recommend the following details to be adopted in the construction of salmon ladders, in addition to those given in the foregoing bye-law, but do not insist on them, provided some other perfectly efficient arrangement be substituted—viz., the side walls to be not less than twenty-two inches in height; the breaks to be not less than eighteen inches in height, with openings of ten inches in breadth at the alternate ends of each break, and five feet apart in cases where the gradient of the ladder is one in five and of a greater distance, but the same proportions being maintained where the gradient is easier than one in five.

7. No dam shall be so altered as to create a greater obstruction to the free passage of fish than at present exists.

WM. J. FFENNELL,
FRED. EDEN,
JAMES LESLIE,
} *Commissioners.*

Fisheries Department, Home Office,
29th day of April 1865.

Approved,
G. GREY.

Whitehall, 19th July 1865.

(This Bye-law to take effect from the 28th July 1865.)

FRESH WATER FISHERIES (SCOTLAND).

8 & 9 Vict. c. 26.

An Act to prevent fishing for Trout or other Freshwater Fish by Nets in the Rivers and Waters in *Scotland*.—30*th June* 1845.

'WHEREAS it is expedient that provision should be made for preventing the destruction of trout and other freshwater fish by 'nets in the rivers, waters, and lochs of *Scotland*:' Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that it shall not be lawful for any person whatsoever, not being the proprietor of the land through or by which any river or water flows, or on which any loch is wholly or partially situated, or not having a right there to fish for trout or freshwater fish, or not having a written permission from some such proprietor or person entitled to fish as aforesaid, at any time after the passing of this Act, to fish for trout or other freshwater fish in any such river, water, or loch in *Scotland*, with any net of any kind or description; and if any person, not being a proprietor or having right or permission as aforesaid, shall wilfully take, fish for, or attempt to take, or aid and assist in taking or fishing for or attempting to take or fish for, in or from any such river, water, or loch, any trout or other fresh water fish, by or with any net of any kind or description, such person shall forfeit and pay any sum not exceeding five pounds for every such offence, besides forfeiting the trout or fish taken, and also every boat or net in or by which the same may have been taken or attempted to be taken, and shall also pay the full expenses of the conviction.

II. And be it enacted, That if any person shall trespass upon any ground, enclosed or unenclosed, or in or upon any river, water, or loch, with intent to take with any net any trout or other fresh water fish, such person shall forfeit and pay a sum not exceeding five pounds for every such offence.

III. And be it enacted, That if any such trespasser shall have in his possession any net of any description whereby trout or other fresh water fish may be taken or killed, the possession thereof shall be held to be sufficient evidence of the intent of such trespasser to commit such offence.

IV. And be it enacted, That it shall be lawful for any person, without any warrant or other authority than this Act, *brevi manû*, to seize and detain any person who shall be found committing any offence against this Act, and to carry such person before the sheriff or any justice of the peace in the county within which the offence shall take place, or to deliver such person to a constable, who is hereby required to carry such person before such sheriff or justice, and the sheriff or justice of the peace before whom such offender shall be brought shall forthwith examine and discharge or commit such offender until caution

de judicio sisti be found, as the case may require; and it shall in like manner be lawful to seize and detain any boat or net of any description used or intended to be used in the commission of any such offence, and also any fish taken by any such offender, and to give information thereof to the sheriff.

V. And be it enacted, That all justices of the peace shall and may act in the execution of this Act notwithstanding that such justices shall be the proprietors of land through or by which any river or water may flow, or upon which any loch may be wholly or partially situated, or shall otherwise have a right of trout or fresh water fishing in any such river, water, or loch, except in cases in which any such justice is a party to the prosecution of the case, or is directly interested in the result thereof; and no such proprietor or party having right as aforesaid shall be incompetent as a witness to prove any offence committed against this Act by reason of his being such proprietor or having such right.

VI. And for the recovery of the penalties and forfeitures imposed by this Act, be it enacted, That any such penalties or forfeitures may be recovered by summary proceeding upon complaint in writing made by any party prosecuting for the same to the sheriff of the county in which such offence shall be committed, or to the sheriff of any county in which the offender may be found, and on such complaint such sheriff shall issue a warrant for bringing the party complained against immediately before him, or shall issue an order requiring such party to appear at a time and place to be named in such order; and every such order shall be served on the party complained against either in person or by leaving with some inmate at his usual place of abode a copy of such order and of the complaint whereon the same has proceeded; and either upon the appearance or on the default to appear of the party complained against it shall be lawful for the sheriff to proceed to the hearing of the complaint, and upon proof of the offence, either by the confession of the party complained against, or upon the oath of one credible witness or more, and without any written pleadings or record of evidence, to convict the offender, and upon such conviction to decern, adjudge, and sentence him to pay the penalty or forfeiture incurred, and the expenses attending the conviction, and to grant warrant for imprisoning him until such penalty or forfeiture and expenses shall be paid: Provided always, that such warrant shall specify the amount of such penalty or forfeiture and expenses, and shall also specify a period at the expiration of which the party shall be discharged, notwithstanding such penalty or forfeiture and expenses shall not have been paid, and which period shall in no case exceed two calendar months; and it shall be lawful for the sheriff to make such orders concerning the immediate disposal of any boat, net, or fish seized or forfeited under the provisions of this Act as may be necessary.

VII. And be it enacted, That it shall be lawful for any person who shall think himself aggrieved by any judgment of the sheriff pronounced in any case arising under this Act to appeal from the same to the next Circuit Court of Justiciary, or where there are no Circuit Courts, to the High Court of Justiciary at *Edinburgh*, in the manner, and by and

under the rules, limitations, conditions, and restrictions contained in an Act passed in the twentieth year of the reign of His Majesty King *George* the Second, for taking away and abolishing heritable jurisdiction in *Scotland*, with this variation, that such person shall, in place of finding caution in the terms prescribed by the said Act, be bound to find caution to pay the penalty or forfeiture and expenses awarded against him by the sentence appealed from, in the event of the appeal being dismissed or not insisted in, together with any additional expenses that may be awarded by the Court on deciding or dismissing the appeal; and it shall not be competent to appeal from or bring the judgment of any sheriff acting in the execution of this Act under review, by advocation or suspension or by reduction, or in any other way than as herein provided.

VIII. And be it enacted, That all penalties and forfeitures imposed under the authority of this Act shall, when levied, be paid, the one half thereof to the prosecutor, and the other half to the poor of the parish within which the offence shall have been committed.

IX. And be it enacted, That no prosecution or other proceeding whatever shall be brought or commenced against any person for any offence against this Act, unless the same shall be commenced within six calendar months after such offence shall have been committed.

X. And be it enacted, That the words 'river,' 'water,' or 'loch' occurring in this Act shall mean and include any stream, burn, mill-pool, mill-lead, mill-dam, sluice, pond, cut, canal, and aqueduct, and every other collection or run of water in which trouts and other fresh water fish breed, haunt, or are found or preserved; that the word 'sheriff' shall mean the sheriff of the county in which the offence happens or case arises, and shall include the sheriff-substitutes of such sheriffs; that the singular shall include the plural number, and words importing the plural number shall include the singular; and words importing the masculine gender shall include females.

XI. And be it enacted, That nothing herein contained shall affect any Act of Parliament, general or local, passed for the preservation of Salmon Fisheries in *Scotland*, or in relation to the fishing of salmon or fish of the salmon kind in *Scotland*.

XII. And be it enacted, That this Act may be amended or repealed by any Act of Parliament to be passed in the present session of Parliament.

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23 & 24 Vict. c. 45.

An Act to extend the Act of the eighth and ninth years of *Victoria*, chapter twenty-six, for preventing fishing for Trout or other Fresh Water Fish by nets in the rivers and waters in *Scotland*.—23*d July* 1860.

'WHEREAS by the Act eighth and ninth Victoria, chapter twenty-six, intituled *An Act to prevent fishing for trout or other fresh water fish by nets in the rivers and waters in* Scotland, provision is

' made for preventing the destruction of trout and other fresh water ' fish by nets in the rivers, waters, and lochs of *Scotland:* And ' whereas there are various other ways by which trout and other fresh ' water fish may be destroyed which have not yet been declared ' illegal:' Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled and by the authority of the same:

I. That it shall not be lawful for any person whatsoever (except as hereinafter provided), at any time after the passing of this Act, to fish for trout or other fresh water fish in any river, water, or loch in *Scotland*, with any net of any kind or description, or by what is known as double rod fishing, or cross line fishing, or set lines, or otter fishing, or burning the water, or by striking the fish with any instrument, or by pointing, or to put into the water lime or any other substance destructive to trout or other fresh water fish with intent to destroy the same; and if any person shall wilfully take, fish for, or attempt to take, or aid and assist in taking or fishing for, or attempting to take or fish for, in or from any such river, water, or loch, any trout or other fresh water fish by or with any net of any kind or description, or by double rod fishing, or cross line fishing, or by set lines, or otter fishing, or by burning the water, or striking the fish with any instrument, or by pointing, or by putting into the water lime or any other substance destructive to trout or other fresh water fish with intent to destroy the same, such person shall forfeit and pay any sum not exceeding five pounds for every such offence, besides forfeiting the trout or fish taken, and also every boat or net, tackle, instrument, or other article in or by which the same may have been taken or attempted to be taken, and shall also pay the full expenses of the conviction: Provided that nothing in this Act contained shall prevent any person having the right to fish in any river, water, or loch in *Scotland*, or any person having permission from such person, from exercising the right of fishing in such river, water, or loch in any mode not prohibited by law prior to the passing of this Act.

II. If any person shall trespass upon any ground, enclosed or unenclosed, or in or upon any river, water, or loch, with intent to take any trout or other fresh water fish, with any net, double rod, cross line, set line, or otter, or by burning the water, or by striking the fish with any instrument, or by pointing, or to destroy the fish by putting lime or other substance destructive to trout or other fresh water fish into the water, such person shall forfeit and pay a sum not exceeding five pounds for every such offence.

III. It shall be lawful for any person, having the authority of the proprietor of land through or past which the river or water flows or upon which the loch is wholly or partially situate, to seize and detain any boat or net of any description, double rod, cross line, set line, or otter, or materials for burning the water, or instruments for striking the fish, or for pointing, or lime or other substance destructive to trout or other fresh water fish, used or intended to be used in the commis-

sion of any such offence, and also any fish taken by any such offender, and to give information thereof to the sheriff or justice of the peace.

IV. All justices of the peace shall and may act in the execution of this Act notwithstanding that such justices shall be the proprietors of land through or past which any river or water may flow, or upon which any loch may be wholly or partially situated, or shall otherwise have a right of trout or fresh water fishing in any such river, water, or loch, except in cases in which the offence has been committed on the property of such justice, or in which such justice is a party to the prosecution of the case, or is directly interested in the result thereof; and no such proprietor or party having right as aforesaid shall be incompetent as a witness to prove any offence committed against this Act by reason of his being such proprietor or having such right.

V. And for the recovery of the penalties and forfeitures imposed by this Act, be it enacted, That any such penalties or forfeitures may be recovered by summary proceeding upon complaint in writing made by the procurator-fiscal or by any party prosecuting for the same to the sheriff or any justice of the peace for the county in which such offence shall be committed, or to the sheriff or any justice of the peace for any county in which the offender may be found, and on such complaint such sheriff or justice of the peace shall issue a warrant for bringing the party complained against immediately before him, or shall issue an order requiring such party to appear at a time and place to be named in such order; and every such order shall be served on the party complained against by any county officer, either by delivering to such person personally, or by leaving with some inmate at his usual place of abode a copy of such order, and of the complaint whereon the same has proceeded; and either upon the appearance or the default to appear of the party complained against it shall be lawful for the sheriff or justice to proceed to the hearing of the complaint; and upon proof of the offence, and without any written pleadings or record of evidence, to convict the offender, and upon such conviction to decern, adjudge, and sentence him to pay the penalty or forfeiture incurred, and the expenses attending the conviction, and to grant warrant for imprisoning him until such penalty or forfeiture and expenses shall be paid: Provided always, that such warrant shall specify the amount of such penalty or forfeiture and expenses, and shall also specify a period at the expiration of which the party shall be discharged, notwithstanding such penalty or forfeiture and expenses shall not have been paid, and which period shall in no case exceed two months; and it shall be lawful for the sheriff or justice to make such orders concerning the immediate disposal of any boat, net, double rod, cross line, set line, or otter, or materials for burning the water, or instruments for striking the fish, or for pointing, or lime or other substance destructive to trout or other fresh water fish, or fish seized or forfeited under the provisions of this Act, as may be necessary.

VI. It shall be lawful for any person who shall think himself aggrieved by any judgment of the sheriff or justice of peace pronounced in any case arising under this Act to appeal from the same

to the next Circuit Court of Justiciary, or where there are no Circuit Courts, to the High Court of Justiciary at *Edinburgh*, in the manner and by and under the rules, limitations, conditions, and restrictions contained in an Act passed in the twentieth year of the reign of His Majesty King *George* the Second, for taking away and abolishing heritable jurisdiction in *Scotland*, with this variation, that such person shall, in place of finding caution in the terms prescribed by the said Act, be bound to find caution to pay the penalty or forfeiture and expenses warded against him by the sentence appealed from in the event of the appeal being dismissed or not insisted in, together with any additional expenses that may be awarded by the Court on deciding or dismissing the appeal; and it shall not be competent to appeal from or bring the judgment of any sheriff or justice of peace acting in the execution of this Act under review, by advocation or suspension or by reduction, or in any other way than as herein provided.

VII. All penalties and forfeitures imposed under the authority of this Act shall, when levied, be paid, the one-half thereof to the prosecutor and the other half to the inspector of the poor of the parish within which the offence shall have been committed, on behalf of such poor.

VIII. No prosecution or other proceeding whatever shall be brought or commenced against any person for any offence against this Act, unless the same shall be commenced within three months after such offence shall have been committed.

IX. The words 'river,' 'water,' or 'loch' occurring in this Act shall mean and include any stream, burn, mill-pool, mill-lead, mill-dam, sluice, pond, cut, canal, and aqueduct, and every other collection or run of water in which trouts and other fresh water fish breed, haunt, or are found or preserved; the word 'sheriff' shall mean the sheriff or steward of the county in which the offence happens or case arises, and shall include the sheriff-substitutes of such sheriffs; the expression 'justice of the peace' shall mean a justice of the peace of the county in which the offence happens or case arises; and the expression 'county officer' shall mean and include sheriff's officer, constable, or any officer of the county police force.

X. Nothing herein contained shall affect any Act of Parliament, general or local, passed for the preservation of the salmon fisheries in *Scotland*, or in relation to the fishing of salmon or fish of the salmon kind in *Scotland*.

XI. Nothing herein contained shall affect or apply to the killing of trout or other fresh water fish with single rod and line, which shall be regulated by the laws in existence prior to the passing of this Act.

SEA FISHERIES.

31 & 32 Vict. c. 45.

An Act to carry into effect a Convention between Her Majesty and the Emperor of the *French* concerning the Fisheries in the Seas adjoining the *British* Islands and *France*, and to amend the Laws relating to *British* Sea Fisheries.—[13*th July* 1868.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

PART I.

Preliminary.

I. This Act shall be divided into parts as follows:

Part I. Preliminary.
Part II. Sea Fishery Convention.
Part III. Oyster Fisheries.
Part IV. Legal Proceedings.
Part V. Miscellaneous.

II. This Act may be cited as the Sea Fisheries Act, 1868.

III. This Act shall (except as is in this Act expressly otherwise provided) come into force on such day as may be fixed by a notice in that behalf published in the *London Gazette*, which day is in this Act referred to as the commencement of this Act.

IV. So much of this Act as relates to *French* subjects or *French* sea fishing boats outside of the exclusive fishery limits of the *British* Islands, and as gives powers to *French* sea fishery officers, shall, on the determination of the convention set out in the first schedule to this Act, cease to apply to *French* subjects, boats, and officers; but, subject as aforesaid, this Act shall continue in force notwithstanding the determination of that convention.

V. In this Act—

The term 'sea fish' does not include salmon, as defined by any Act relating to salmon, but save, as aforesaid, includes every description both of fish and of shell fish which is found in the seas to which this Act applies; and 'sea fishing,' 'sea fisherman,' and other expressions referring to sea fish shall in this Act be construed to refer only to sea fish as before defined:

The term 'sea fishing boat' includes every vessel of whatever size, and in whatever way propelled, which is used by any person in sea fishing, or in carrying on the business of a sea fisherman:

The term '*British* Islands' includes the United Kingdom of *Great Britain* and *Ireland*, the *Isle of Man*, the islands of *Guernsey*,

Jersey, *Alderney*, and *Sark*, and their dependencies; and the terms '*Great Britain* and *Ireland*' and 'United Kingdom,' as used in the first schedule to this Act, shall be construed to mean the '*British* Islands' as herein defined:

The terms 'exclusive fishery limits of the *British* Islands' and 'exclusive fishery limits of *France*' mean the limits within which the exclusive right of fishing is by article one of the first schedule to this Act reserved to *British* subjects and *French* subjects respectively:

The term 'Consular Officer' includes Consul-General, Consul, and Vice-Consul, and any person for the time being discharging the duties of Consul-General, Consul, or Vice-Consul; and the term 'consular agent' in the first schedule to this Act shall be construed to mean consular officer:

The term 'court' includes any tribunal or magistrate exercising jurisdiction under this Act:

The term 'person' includes a body corporate:

The term 'the *Irish* Fishery Commissioners' means the commissioners acting in execution of the Act of the session of the fifth and sixth years of the reign of Her present Majesty, chapter one hundred and six, intituled *An Act to regulate the* Irish *Fisheries*, and the Acts amending the same.

PART II.

Convention and Fisheries.

General Provisions.

VI. The convention set out in the first schedule to this Act (referred to in this Act as the convention) is hereby confirmed, and the articles thereof and the declaration thereto annexed shall be of the same force as if they were enacted in the body of this Act.

VII. It shall be lawful for Her Majesty from time to time, by order in council, to make, alter, and revoke regulations for carrying into execution this Act and the intent and object thereof, and for the maintenance of good order among sea fishing boats, and the persons belonging thereto, and to impose penalties not exceeding ten pounds for the breach of such regulations.

VIII. The following persons shall have authority to enforce the provisions of this Act and of any order in council made thereunder; namely, every officer of or appointed by the Board of Trade, every commissioned officer of any of Her Majesty's ships on full pay, every *British* consular officer, every collector and principal officer of customs in any place in the *British* Islands, every inspecting commander of the coast guard, every principal officer of a coast guard station, and every commander of any vessel belonging to the *French* Government, and every person appointed by the *French* Government to superintend the fisheries referred to in the convention; and such persons are in this Act referred to as sea fishery officers.

IX. A sea fishery officer, for the purpose of enforcing the provisions of this Act and of any order in council made thereunder, may, with respect to any sea fishing boat within the exclusive fishery limits of the *British* Islands, and with respect to any *British* or *French* sea fishing boat outside of those limits, in the seas to which this Act applies, exercise the following powers:

(1.) He may go on board it:

(2.) He may require the owner, master, and crew, or any of them, to produce any certificates of registry, licences, official log-books, official papers, articles of agreement, muster rolls, and other documents relating to the boat or to the crew, or to any member thereof, or to any person on board the boat, which are in their respective possession or control on board the boat, and may take copies thereof or of any part thereof:

(3.) He may muster the crew of the boat:

(4.) He may require the master to appear and give any explanation concerning his boat and her crew, and any person on board his boat, and the said certificates of registry, licences, official logbooks, official papers, articles of agreement, muster rolls, and other documents, or any of them:

(5.) He may examine all sails, lights, buoys, barrels, floats, nets, and implements of fishing belonging to the boat:

(6). He may make any examination and inquiry which he deems necessary to ascertain whether the provisions of this Act, or of any Order in Council made thereunder are complied with:

(7.) He may, in the case of any person who has committed any of the Acts constituted offences by this part of this Act, or by any Order in Council made thereunder, without summons, warrant, or other process, both take the offender and the boat to which he belongs, and the crew thereof, to the nearest or most convenient port, and bring him or them before a competent court, and, subject to article twenty-seven of the Convention, detain him, it, and them in the port until the alleged offence has been adjudicated upon.

X. A sea fishery officer shall be entitled to the same protection in respect of any action or suit brought against him for any act done or omitted to be done in the execution of his duty under this Act as is given to any officer of customs by the Customs Consolidation Act, 1853, and (with reference to the seizure or detention of any ship) by any Act relating to the registry of *British* ships.

Fishery Regulations.

XI. If any person obstructs any sea fishery officer in acting under the powers conferred by this Act, or refuses or neglects to comply with any requisition or direction lawfully made or given by, or to answer any question lawfully asked by, any sea fishery officer in pursuance of this Act, such person shall be deemed to have committed an offence against the fishery regulations of this Act.

XII. If any person belonging to a sea fishing boat which is either *British* or *French* acts in contravention of article eleven of the first schedule to this Act, such person shall be deemed to have committed an offence against the fishery regulations of this Act.

XIII. If within the exclusive fishery limits of the *British* Islands any person, or if outside of those limits any person belonging to a sea fishing boat which is either *British* or *French*, acts in contravention of articles twelve, fifteen, sixteen, seventeen, nineteen, twenty, and twenty-one of the first schedule to this Act, or any of them, or causes injury to any person in any one or more of the following ways, namely, by assaulting any one belonging to another sea fishing boat, or by causing any damage to another sea fishing boat, or to any property on board thereof or belonging thereto, such person shall be deemed to have committed an offence against the fishery regulations of this Act.

XIV. Every person who has committed an offence against the fishery regulations of this Act within the exclusive fishery limits of the *British* Islands, and every person belonging to a *British* sea fishing boat who has committed an offence against those regulations outside of those limits, shall be liable to a penalty of not less than eight shillings and not more than fifty pounds, or in the discretion of the Court, to imprisonment for not less than two days and not more than three months, with or without hard labour.

If the offence is one by which some injury has been caused in any of the ways before mentioned the Court may order the offender to pay in addition to any penalty a reasonable sum as compensation to the person injured, which sum may be recovered in the same manner as a penalty under this Act.

XV. Where a person belonging to a *French* sea fishing boat has committed, outside of the exclusive fishery limits of the *British* Islands, an offence against the fishery regulations of this Act, he shall, after the evidence is taken as provided by this Act, be sent back to *France* for trial.

Exclusive Fishery Limits.

XVI. If any person belonging to a *French* sea fishing boat acts in contravention of articles thirty-two, thirty-three, and thirty-five of the first schedule to this Act, or any of them, the master or person for the time being in charge of such boat shall be liable for the first offence to a penalty not exceeding ten pounds ; for the second or any subsequent offence to a penalty not exceeding twenty pounds.

And the Court may order that in default of payment of any such penalty the boat to which the offender belongs may be detained in some port of the *British* Islands for a period not exceeding three months from the date of the sentence inflicting the penalty.

Entry of Boats and Sale of Fish.

XVII. Article thirty-one of the Convention and the declaration annexed to the Convention shall not come into force until such day as

may be fixed in that behalf by a notice published in the *London Gazette.*

XVIII. The Commissioners of Her Majesty's Customs may from time to time make, alter, and revoke regulations for carrying into effect article thirty-one of the Convention, and respecting the report of *British* sea fishing boats which have visited foreign ports, and of sea fishing boats which are not *British*, and respecting the entry and landing of fish taken by sea fishing boats which are not *British*, or respecting any of such matters, and may for such purpose alter and dispense with all or any of the regulations and enactments relating to the aforesaid matters which are contained in this or any other Act, or are otherwise from time time in force.

The regulations so made shall be deemed to be regulations within the meaning of section two hundred of the Customs Consolidation Act, 1853.

XIX. After the commencement of this Act all restrictions whatever, in *England*, on the sale of sea fish, as defined by this Act, which is not diseased, unsound, unwholesome, or unfit for the food of man, shall be abolished.

Lights.

XX. Articles thirteen and fourteen of the first schedule to this Act shall, as to all sea fishing boats within the exclusive fishery limits of the *British* Islands, and as to *British* sea fishing boats outside of these limits, have the same force as if they were regulations respecting lights within the meaning of the Acts relating to Merchant Shipping, with this addition, that any sea fishery officer shall have the same powers of enforcing such regulations as are given to any officer by such Acts, and any infringement of the regulations contained in articles thirteen and fourteen shall be deemed an offence within the meaning of the portion of this Act which gives power to sea fishery officers.

XXI. The boats and articles specified in article twenty-two of the first schedule to this Act shall be deemed to be included in the term 'Wreck' as used in any Act relating to Merchant Shipping.

Registry of Sea Fishing Boats.

XXII. Subject to any exemptions allowed by or in pursuance of any Order in Council made as hereinafter mentioned, every *British* sea fishing boat shall, as required by articles four, five, six, seven, and eight of the Convention, be lettered and numbered and have official papers, and shall for that purpose be entered or registered in a Register for Sea Fishing Boats.

A *British* sea fishing boat which is required to be entered or registered in pursuance of this part of this Act, but is not so entered or registered, shall not be entitled to any of the privileges or advantages of a *British* sea fishing boat, but all obligations, liabilities, and penalties with reference to such boat, and the punishment of offences committed on board her, or by any persons belonging to her, and the

jurisdiction of officers and courts, shall be the same as if such boat were actually so entered or registered.

If any *British* sea fishing boat require to be entered or registered in pursuance of this part of this Act, and not being so entered or registered, is used as a sea fishing boat in the seas to which this Act applies, the owner and the master of such boat shall each be liable to a penalty not exceeding twenty pounds; and any sea fishery officer may seize and detain such boat and prevent it from going to sea and from sea fishing until it is duly entered or registered, and may for that purpose, if it is at sea, take it back into the nearest or most convenient port in the *British* Islands.

XXIII. It shall be lawful for Her Majesty by order in council from time to time to do all or any of the following things; namely,

(*a*) To make regulations for carrying out, enforcing, and giving effect to both the entry and registry of *British* sea fishing boats, and also articles four, five, six, seven, and eight of the first schedule to this Act:

(*b*) To adopt in such regulations any existing system of registry or lettering and numbering of boats, and to provide for bringing any such system into conformity with the requirements of the Convention and this Act, and with the said regulations:

(*c*) To define the boats or classes of boats to which such regulations or any of them are to apply, and to provide for the exemption of any boats or classes of boats from such regulations or any of them, and from the provisions of this part of this Act with respect to entry or registry and the possession of a certificate of registry and official papers:

(*d*) To apply to the entry and registry respectively of sea fishing boats so defined, and to all matters incidental thereto, such (if any) of the enactments contained in any Act relating to the registry of *British* ships, and with such modifications and alterations as may be found desirable:

(*e*) To impose penalties not exceeding twenty pounds for the breach of any regulations made by any Order in Council, for the breach of which a punishment cannot be provided by the application of the enactments contained in any Act relating to the registry of *British* ships:

(*f*) To alter and revoke an order so made:

And every such order shall be of the same force as if it were enacted in this Act.

XXIV. In all proceedings against the owner or master of or any person belonging to any boat registered or entered in the register for sea fishing boats for offences against the fishery regulations or regulations as to lights in this Act, and in all actions or suits for the recovery of damages for injury done by any such boat, such register, or the register under any Act relating to the registry of *British* ships as to boats registered therein, shall be conclusive evidence that the persons registered at any date as owners of such boat were at that date

owners thereof, and that the boat is a *British* sea fishing boat: Provided that—

(1.) This provision shall not prevent any proceedings, action, or suit being taken or instituted against any person not registered who is beneficially interested in the boat:

(2.) This provision shall not affect the rights of the owners among themselves, or the rights of any registered owner against any person not registered who is beneficially interested in the boat:

(3.) Save as aforesaid, entry or registry in the register for sea fishing boats shall not confer, take away, or affect any title to or interest in any sea fishing boat.

XXV. The two hundred and seventh section of the Customs Consolidation Act, 1853, shall not apply to any *British* sea fishing boat entered or registered in pursuance of this part of this Act.

XXVI. Subject to any exemptions allowed by or in pursuance of such Order in Council, the master of every sea fishing boat within the exclusive fishery limits of the *British* Islands, and of every *British* sea fishing boat outside of those limits, shall have on board his boat, if it is a *British* sea fishing boat required by this part of this Act to be entered or registered, the certificate of registry or official papers issued to the boat in pursuance of any Act relating to the registry of *British* ships, or of this part of this Act, and if it is not *British*, then official papers evidencing the nationality of such boat.

The master of any such boat who acts in contravention of this section, unless there is a reasonable cause for not having such certificate or official papers (proof whereof shall lie on him), shall be liable, together with his boat and crew, to be taken by any sea fishery officer, without warrant, summons, or other process, into the nearest or most convenient port, and there to be ordered by the Court, on any proceeding in a summary manner, to pay a penalty not exceeding twenty pounds, and if such penalty is not paid, and the boat is not *British*, such boat may be detained in port for a period not exceeding three months from the date of the sentence.

PART III.

Oyster Fisheries.

Preliminary.

XXVII. This part of this Act shall not interfere with the jurisdiction or powers now possessed by the *Irish* Fishery Commissioners with regard to oyster fisheries, and shall not apply to *Ireland*, the *Isle of Man*, or the Islands of *Guernsey*, *Jersey*, *Alderney*, or *Sark*, or their dependencies, or to the seas adjoining the same, within the exclusive fishery limits of the *British* Islands, or to any seas outside of those exclusive fishery limits.

XXVIII. In this part of this Act the words 'Oysters' and 'Mussels' respectively include the brood, ware, half-ware, spat, and spawn of oysters and mussels respectively.

In this part of the Act the expression 'Oyster and Mussel Fishery' includes a fishery for either oysters or mussels separately, and the term 'Oyster or Mussel Fishery' includes a fishery for both oysters and mussels; and the provisions of this part of this Act shall be construed to apply in the case of any fishery to oysters and oyster ground and beds alone, or to mussels and mussel ground and beds alone, or to both oysters and mussels and oyster and mussel ground and beds, according as the right of fishery is for oysters alone, or for mussels alone, or for both oysters and mussels.

Order for Fishery.

XXIX. An order for the establishment or improvement, and for the maintenance and regulation, of an oyster and mussel fishery on the shore and bed of the sea, or of an estuary or tidal river, above or below, or partly above and partly below, low water mark (which shore and bed are in this part of this Act referred to as the sea shore), and including, if desirable, provisions for the constitution of a board or body corporate for the purpose of such order, may be made under this part of this Act, on an application by a memorial in that behalf presented to the Board of Trade by any persons desirous of obtaining such an order (which persons are in this part of this Act referred to as the promoters).

XXX. If on consideration of the memorial the Board of Trade think fit to proceed in the case, the promoters shall cause printed copies of the draft of the order as proposed by them (with such modifications, if any, as the Board of Trade require) to be published and circulated in such manner as the Board of Trade think sufficient and proper for giving information to all parties interested, and shall give notice of the application, in such manner as the Board of Trade direct or approve, to the owners or reputed owners, lessees or reputed lessees, and occupiers (if any) of the portion of the sea shore to which the proposed order relates, and of the lands adjoining thereto.

XXXI. During one month after the first publication of the draft order the Board of Trade shall receive any objections or representations made to them in writing respecting the proposed order.

XXXII. The Board of Trade shall, as soon as conveniently may be after the expiration of the said month, appoint some fit person to act as inspector respecting the proposed order.

The inspector shall proceed to make an inquiry concerning the subject matter of the proposed order, and for that purpose to hold a sitting or sittings in some convenient place in the neighbourhood of the portion of the sea shore to which the proposed order relates, and thereat to take and receive any evidence and information offered, and hear and inquire into any objections or representations made respecting the proposed order, with power from time to time to adjourn any

sitting; and the inspector may, for the purpose of such inquiry, take evidence, and by summons under his hand require the attendance of any person, and examine him and any person who attends before him, on oath or otherwise, as he thinks expedient, and may administer an oath or take any affidavit or declaration for the purpose of the inquiry; and any person so summoned who, after tender to him of his reasonable expenses, refuses or neglects to obey such summons, and any person who refuses or neglects to answer any question which the inspector is authorised to ask, shall be liable, on summary conviction, to a penalty not exceeding ten pounds for each offence; and any person who wilfully gives false evidence in any examination on oath in any such inquiry, or in an affidavit or declaration to be used in any such inquiry, shall be deemed guilty of perjury.

Notice shall be published in such manner as the Board of Trade direct of every such sitting (except an adjourned sitting) fourteen days at least before the holding thereof.

XXXIII. The inspector shall make a report in writing to the Board of Trade setting forth the result of the inquiry, and stating whether in his opinion the proposed order should be approved, with or without alteration, and if with any, then with what alteration, and his reasons for the same, and the objections and representations, if any, made on the inquiry, and his opinion thereon.

XXXIV. As soon as conveniently may be after the expiration of the said month, or after the receipt by the Board of Trade of the report of the inspector, they shall proceed to consider the objections or representations that have been made respecting the proposed order and also the report of the inspector, and thereupon they shall either refuse the application or settle and make an order in such form and containing such provisions as they think expedient.

XXXV. Where the Board of Trade make an order, the promoters shall cause it to be published and circulated in such manner as the Board of Trade think sufficient for giving information to all parties interested, and shall give notice of it, in such manner as the Board of Trade direct or approve, to the owners or reputed owners, lessees or reputed lessees, and occupiers (if any) of the portion of the sea shore to which the order relates, and of the lands adjoining thereto.

XXXVI. All expenses incurred by the Board of Trade in relation to any memorial, or to any order consequent thereon, shall be defrayed by the promoters, and the Board of Trade shall, if they think fit, on or at any time after the presentation of the memorial, require the promoters to pay to the Board of Trade such sum as the Board of Trade think requisite for or on account of those expenses, or to give security to the satisfaction of the Board of Trade for the payment of those expenses on demand.

XXXVII. An order of the Board of Trade under this part of this Act shall not of itself have any operation, but the same shall have full operation when and as confirmed by Act of Parliament, with such modifications, if any, as to Parliament seem fit.

XXXVIII. If in the progress through Parliament of a bill con-

firming an order a petition is presented to either House of Parliament against the order, the bill, as far as it relates to the order petitioned against, may be referred to a select committee, and the petitioner shall be allowed to appear and oppose as in case of a private bill.

XXXIX. The Board of Trade may from time to time make an order for amending an order that has been confirmed by Act of Parliament, and all the provisions of this part of this Act relative to an original order shall apply also to an amending order, *mutatis mutandis*.

XL. Where an order of the Board of Trade under this part of this Act confers a right of several oyster and mussel fishery, the persons obtaining the order, in this Act referred to as the grantees, shall, by virtue of the order and of this part of this Act, but subject to any restrictions and exceptions contained in the order, have, within the limits of the fishery, the exclusive right of depositing, propagating, dredging, and fishing for, and taking oysters and mussels, and in the exercise of that right may, within the limits of the fishery, proceed as follows, namely, make and maintain oyster and mussel beds or either of them, and at any season collect oysters and mussels, and remove the same from place to place, and deposit the same as and where they think fit, and do all other things which they think proper for obtaining, storing, and disposing of the produce of their fishery.

XLI. Where an order of the Board of Trade under this part of this Act, without conferring a right of several oyster and mussel fishery, confers a right of regulating an oyster and mussel fishery, and imposes restrictions on or makes regulations respecting the dredging and fishing for and taking oysters and mussels, or either of them, within the limits of the regulated fishery, or imposes tolls or royalties upon persons dredging, fishing for, and taking oysters and mussels, or either of them, within the limits of such fishery, the persons obtaining the order, in this Act included in the term the grantees, shall, by virtue of the order and of this part of this Act, but subject to any restrictions and exceptions contained in the order, have power to do all or any of the following things ; namely,

(*a*). To carry into effect and enforce such restrictions and regulations :

(*b*). To levy such tolls or royalties :

(*c*). To provide for depositing and propagating oysters and mussels within the limits of the fishery, and for improving and cultivating the fishery.

All such restrictions, regulations, tolls, and royalties shall be imposed on and apply to all persons equally, and shall be for the benefit of the fishery only, and the tolls and royalties shall be applied in the improvement and cultivation of the fishery.

Any person who dredges or fishes for or takes any oysters or mussels in contravention of any such restriction or regulation or without paying any such toll or royalty, shall be liable on summary conviction to pay a penalty not exceeding twenty pounds, and to forfeit all oysters and mussels so taken, or a sum equal to the value thereof

if they have been sold, which forfeiture may be enforced in the same manner as a penalty.

The Court may direct such forfeiture to be delivered or paid to the grantees to be applied by them for the improvement and cultivation of the fishery.

XLII. Whenever it is necessary in any legal proceeding to prove that, in pursuance of any Act of Parliament or of an order under this part of this Act, the limits of any oyster and mussel fishery have been duly buoyed or otherwise marked, or notices of such limits have been duly published, posted, or distributed, or that notice of the provisions of the order or of such Act relating to the oyster and mussel fishery has been duly published, a certificate purporting to be under the hand of one of the secretaries or assistant secretaries of the Board of Trade, certifying that the Board of Trade are satisfied that the said limits were so buoyed or marked, or that the said notices were duly published, posted, or distributed, shall be received as evidence that the same have been so buoyed or marked, or that the said notices have been so published, posted, or distributed.

XLIII. The portion of the sea shore to which an order of the Board of Trade under this part of this Act relates (as far as it is not by law within the body of any county) shall for all purposes of jurisdiction be deemed to be within the body of the adjoining county, or to be within the body of each of the adjoining counties, if more than one.

XLIV. The Board of Trade shall not in any case make an order conferring a right of several oyster and mussel fishery, or a right of regulating an oyster and mussel fishery, for a longer period at once than sixty years.

XLV. A right of several oyster or mussel fishery conferred by an order of the Board of Trade under this part of this Act, or by 'The '*Roach River* Oyster Fishery Act, 1866,' and a right of regulating an oyster and mussel fishery, shall, notwithstanding anything in the order or in the said Act, be determinable by a certificate of the Board of Trade (which certificate they are hereby empowered to make) certifying to the effect that the Board of Trade are not satisfied that the grantees under the order, or the company under the said Act (as the case may be), are properly cultivating the oyster or mussel ground within the limits of such fishery, or are properly carrying into effect and enforcing the restrictions and regulations, and levying the tolls or royalties; and on any such certificate being made, the right of several fishery or right of regulating the fishery (as the case may be) by such order or the said Act conferred shall, by virtue of this part of this Act and of the certificate, be absolutely determined, and all provisions of this part of this Act or of the said Act shall cease to operate in relation to such fishery as a several oyster and mussel fishery or as a regulated fishery.

For the purposes of this provision the Board of Trade may from time to time, with respect to any such fishery, make such inquiries and examination by an inspector or otherwise, and require from the gran-

tees or company such information, as the Board of Trade think necessary or proper, and the grantees or company shall afford all facilities for such inquiries and examination, and give such information accordingly.

XLVI. Where any portion of the sea shore proposed to be comprised in an order of the Board of Trade under this part of this Act belongs to Her Majesty, her heirs or successors, in right of the crown, but is not under the management of the Board of Trade, or forms part of the possessions of the Duchy of *Lancaster* or of the Duchy of *Cornwall*, the Board of Trade shall not make the order without such consent as herein-after mentioned; namely,

In the first-mentioned case of the Commissioners of Her Majesty's Woods, Forests, and Land Revenues, or one of them:

In the secondly-mentioned case of the Chancellor of the Duchy of *Lancaster* in writing under his hand attested by the clerk of the council of the duchy:

In the thirdly-mentioned case of the Duke of *Cornwall*, or other the persons for the time being empowered to dispose for any purpose of lands of the Duchy of *Cornwall*.

XLVII. Where any portion of the sea shore comprised in an order of the Board of Trade under this part of this Act does not belong to Her Majesty, her heirs or successors, in right of the crown, or form part of the possessions of the Duchy of *Lancaster* or of the Duchy of *Cornwall*, the Board of Trade shall incorporate in the order 'The Lands Clauses Consolidation Act, 1845,' or 'The Lands Clauses 'Consolidation (*Scotland*) Act, 1845,' as the case requires, and shall apply the provisions thereof respectively to the purchase or taking of such portion of the sea shore.

XLVIII. No order made by the Board of Trade under this part of this Act shall take away or abridge any right of several fishery, or any right on, to, or over any portion of the sea shore, which right is enjoyed by any person under any local or special Act of Parliament, or any royal charter, letters patent, prescription, or immemorial usage, without the consent of such person.

XLIX. The persons obtaining an order under this part of this Act shall at all times keep at some convenient place, in the neighbourhood of the portion of the sea shore to which the order relates, copies of the order with the Act confirming it, and of this part of this Act, printed respectively by some of Her Majesty's printers, and shall sell such copies to all persons desiring to buy them at a price not exceeding sixpence for one copy of this part of this Act and of the order and of the Act confirming it together.

If any such persons fail to comply with this provision, they shall for every such offence be liable to a penalty not exceeding five pounds, and to a further penalty not exceeding one pound for every day during which such failure continues after the day on which the first penalty is incurred.

L. There shall be annually laid before both Houses of Parliament a report of the Board of Trade respecting the applications to and pro-

ceedings of the Board of Trade under this part of this Act during each year.

Protection of Oyster Beds.

LI. All oysters and mussels being in or on an oyster or mussel bed within the limits of a several oyster and mussel fishery granted by an order under this part of this Act, and all oysters being in or on any private oyster bed which is owned by any person independently of this Act, and is sufficiently marked out or sufficiently known as such, shall be the absolute property of the grantees or of such owner, as the case may be, and in all courts of law and equity and elsewhere, and for all purposes, civil, criminal, or other, shall be deemed to be in the actual possession of the grantees and such owner respectively.

LII. All oysters and mussels removed by any person from an oyster or mussel bed within the limits of any such several fishery, and all oysters removed by any person from any such private oyster bed, and not either sold in market overt or disposed of by or under the authority of the grantees or owner (as the case may be), shall be the absolute property of the grantees and owner respectively, and in all courts of law and equity and elsewhere, and for all purposes, civil, criminal, or other, the absolute right to the possession thereof shall be deemed to be in the grantees and owner respectively.

LIII. It shall not be lawful for any person other than the grantees, their agents, servants and workmen, within the limits of any such several fishery, or in any part of the space within the same described in this behalf in the order, or other than the owner of any such private oyster bed, his agents, servants, and workmen, within the limits of such bed, knowingly to do any of the following things:

To use any implement of fishing, except a line and hook or a net adapted solely for catching floating fish, and so used as not to disturb or injure in any manner any oyster or mussel bed, or oysters or mussels, or the oyster or mussel fishery:

To dredge for any ballast or other substance except under a lawful authority for improving the navigation:

To deposit any ballast, rubbish, or other substance:

To place any implement, apparatus, or thing prejudicial or likely to be prejudicial to any oyster or mussel bed, or oysters or mussels, or to the oyster or mussel fishery, except for a lawful purpose of navigation or anchorage:

To disturb or injure in any manner, except as last aforesaid, any oyster or mussel bed, or oysters or mussels, or the oyster or mussel fishery:

And if any person does any act in contravention of this section he shall be liable to the following penalty, namely, to a penalty not exceeding two pounds for the first offence, and not exceeding five pounds for the second offence, and not exceeding ten pounds for the third and every subsequent offence; and every such person shall also be liable to make full compensation to the grantees and owner respectively for

all damage sustained by them or him by reason of his unlawful act, and in default of payment the same may be recovered from him by the grantees and owner respectively by proceedings in any Court of competent jurisdiction (but not in a summary manner), whether he has been prosecuted for or convicted of an offence against this section or not.

LIV. Provided always, that nothing in the last foregoing section shall make it unlawful for any person to do any of the things therein mentioned,—

(*a*). In the case of a fishery granted by an order under this part of this Act, if at the time of his doing the same the limits of the several fishery or of the space within the same described in that behalf in the order are not sufficiently marked out in manner prescribed by or under the order, or if notice of those limits has not been given to him in manner so prescribed :

(*b*). In the case of a private oyster bed owned by any person independently of this Act, if it is not sufficiently marked out and known as such.

LV. When two or more oyster or mussel beds or fisheries belonging to different proprietors are contiguous to each other, and any proceeding by indictment or otherwise is taken against any person for stealing oysters or mussels from any bed formed under an order made in pursuance of this part of this Act, or for stealing oysters from any bed formed independently of this Act, it shall be sufficient, in alleging and proving the property and lawful possession of the oysters or mussels stolen, and the place from which they were stolen, to allege and prove that they were the property of and in the lawful possession of one or other of such proprietors, and were stolen from one or other of such contiguous beds or fisheries.

LVI. This part of this Act shall, as to all orders made under the Oyster and Mussel Fisheries Act, 1866, which have been or may be confirmed in this session of Parliament, apply in the same manner as if they had been made and confirmed in pursuance of this part of this Act.

All orders made under the Oyster and Mussel Fisheries Act, 1866, before the commencement of this Act, and not so confirmed, and all proceedings taken before the commencement of this Act with a view to obtain any such orders, shall have effect and be proceeded with as if they had been respectively made and taken under this part of this Act.

PART IV.

Legal Proceedings.

LVII. All penalties, offences, and proceedings under this Act, or under any order in council made thereunder (except any felony, and except as otherwise provided), may be recovered, prosecuted, and taken in a summary manner, and—

In *England*, before any justice, and

In *Scotland*, before any court or judge acting under the Summary Procedure Act, 1864, and any Act amending the same, in manner directed by those Acts, and

In the *Isle of Man*, and the islands of *Guernsey*, *Jersey*, *Alderney*, and *Sark* respectively, before any court, governor, deputy-governor, deemster, jurat, or other magistrate, in the manner in which the like penalties, offences, and proceedings are by law recovered, prosecuted, and taken, or as near thereto as circumstances admit.

LVIII. If any person feels aggrieved by any conviction under this Act, or by any determination or adjudication of the Court with respect to any compensation under this Act, where the sum adjudged to be paid exceeds five pounds, or the period of imprisonment adjudged exceeds one month, he may appeal therefrom in manner following; (that is to say),

In *England*, in manner directed by law, subject, in the city of *London* and the metropolitan police district, to the enactments in that behalf made, and subject elsewhere to the conditions and regulations following:

1. The appeal shall be made to some Court of general or quarter sessions for the county or place in which the Court whose decision is complained of has jurisdiction, holden not less than fifteen days and not more than four months after the decision of the Court from which the appeal is made:
2. The appellant shall within three days after the said decision give notice in writing to the other party of his intention to appeal, and the ground of such appeal:
3. Immediately after such notice the appellant shall before a justice of the peace enter into recognizances with two sufficient sureties conditioned personally to try such appeal, and to abide the judgment of the Court thereon, and to pay such costs as may be awarded by the Court:
4. The Court may adjourn the appeal, and upon the hearing thereof they may reverse, confirm, or modify the decision of the justice or justices, with or without costs to be paid by either party:

In *Ireland*, in manner directed by the petty sessions, *Ireland*, Act, 1851, and any Act amending the same:

In *Scotland*, the *Isle of Man*, and the islands of *Guernsey*, *Jersey*, *Alderney*, and *Sark*, in manner in which appeals from the like convictions and determinations and adjudications are made.

LIX. Where a person belonging to a *French* sea fishing boat is charged with having committed outside of the exclusive fishery limits of the *British* islands an offence againt the fishery regulations of this Act, the Court shall have jurisdiction to hear and shall hear the case in the same manner as if such person were liable to a penalty under this Act, subject to the following provisions:

(1.) The statement on oath of each witness shall be put into writing, and such writing, in this Act referred to as the deposition, shall (in the presence of the accused, unless he has left the

port), be read over to and signed by the witness and by the person or one of the persons who constitute the Court:

(2.) After the examination of all the witnesses has been completed the Court shall inquire whether the accused has any answer to make to the accusation, and shall warn him that what he says may be given in evidence against him:

(3.) Any statement made by the accused shall be put into writing, and signed by the person or persons constituting the Court, and added to the depositions:

(4.) If the Court is of opinion that the evidence is not sufficient to put the accused upon his trial, or to raise a strong or probable presumption of his guilt, the Court shall order him to be discharged. If the Court is of the contrary opinion, the Court shall make an order directing him to be sent back to *France* for trial, and directing the depositions to be sent to the collector of customs of the port for transmission to the *British* consular officer of the port to which the accused belongs:

(5.) All proceedings under this section shall, if possible, be completed before the expiration of three clear days after the arrival of the offender at the port in the *British* islands.

LX. For the purpose of giving jurisdiction to Courts under this Act, the following provisions shall have effect:

(1.) A sea fishing boat shall be deemed to be a ship within the meaning of any Act relating to offences committed on board a ship:

(2.) The same Court shall have power to exercise the jurisdiction conferred by this Act with respect to an offence committed by a foreign subject as would have jurisdiction to try such offence if it had been committed by a *British* subject.

LXI. If any offender belonging to a *British* sea fishing boat is taken into a *French* port in pursuance of the Convention, the depositions, minutes, and other documents, authenticated in manner provided by article twenty-eight of the Convention, shall be receivable in evidence without further proof of their authenticity, and a certificate under the seal of a *French* consular officer in the *British* islands that such documents have been so authenticated shall be conclusive evidence of the fact.

If the depositions were taken in the presence of and so as to be understood by the accused, or if the accused had an opportunity of cross-examining the deponents, or if the minutes are minutes of a judicial proceeding at which the *British* consular officer of the port was present, and in which the matter in dispute was fairly investigated, and the accused had an opportunity of making his defence, the *British* consular officer shall certify such fact or facts under his hand and seal, and until the contrary is proved such certificate shall be sufficient evidence of the matters therein stated, and such seal, signature, and certificate shall be deemed to be a seal, signature, and document within the meaning of sections three and five of the Act of the Session of the eighteenth and nineteenth years of the reign of Her present Majesty,

chapter forty-two, intituled *An Act to enable Diplomatic and Consular Agents abroad to administer Oaths and do Notarial Acts.*

LXII. Service of any summons or other matter in any legal proceeding under this Act shall be good service if made personally on the person to be served, or at his last place of abode, or if made by leaving such summons for him on board any sea fishing boat to which he may belong, with the person being or appearing to be in command or charge of such boat.

LXIII. Where any offence against the fishery regulations of this Act has been committed by some person belonging to any sea fishing boat, the master or person for the time being in charge of such boat shall in every case be liable to pay any penalty imposed or compensation awarded in respect of such offence, unless the person who actually committed such offence is proved guilty to the satisfaction of the Court.

Any penalty under this Act, except a penalty for the non-payment of which detention in a port is specially provided as the remedy, may be recovered in the ordinary way, or, if the Court think fit so to order, by distress or poinding and sale of the sea-fishing boat to which the offender belongs, and her tackle, apparel, and furniture, and any property on board thereof or belonging thereto, or any part thereof.

LXIV. The Court imposing any penalty or enforcing any forfeiture under this Act may, if it think fit, direct the whole or any part thereof to be applied in or towards payment of the expenses of the proceedings; and, subject to such direction, and to any direction given under any express provision in this Act, all penalties and forfeitures recovered under this Act shall be paid into the receipt of Her Majesty's Exchequer in such manner as the Commissioners of the Treasury may direct, and shall be carried to the Consolidated Fund.

LXV. Nothing in this Act shall prevent any person being liable under any other Act or otherwise to any indictment, proceeding, punishment, or penalty, other than is provided for any offence by this Act, so that no person be punished twice for the same offence.

Nothing in this Act, or in any Order in Council made thereunder, nor any proceedings under such Act or Order with respect to any matter, shall alter the liability of any person in any action or suit with reference to the same matter, so that no person shall be required to pay compensation twice in respect of the same injury.

PART V.

Miscellaneous.

LXVI. Whereas by a Convention concluded between the United Kingdom and *France* on the twenty-sixth day of *January* one thousand eight hundred and twenty-six it was, amongst other matters, agreed that sea-fishing boats of either country, when forced by stress of weather to seek shelter in the ports or on the coasts of the other country, should on certain conditions be exempted from all dues to

which they would otherwise be liable, and doubts have arisen whether that part of the said Convention has ever been confirmed by the authority of Parliament, and it is expedient to remove such doubts, and to enable Her Majesty to provide for the due execution of the said Convention and of any other like Convention or Treaty which may be made by Her Majesty: Be it enacted, that where any such Convention or Treaty as mentioned in this section has been or may hereafter be concluded with any foreign country, Her Majesty may by Order in Council direct that every sea-fishing boat belonging to such foreign country, when forced by stress of weather to seek shelter in any port or place in the *British* islands, shall, if it does not discharge or receive on board any cargo, and complies with the other conditions, if any, specified in such Order, be exempt from all dues, tolls, rates, taxes, duties, imposts, and other charges to which it would otherwise be liable in such port or place, and every such boat shall be exempt accordingly.

LXVII. The *Irish* Fishery Commissioners may from time to time lay before Her Majesty in Council bye-laws for the purpose of restricting or regulating the dredging for oysters on any oyster beds or banks situate within the distance of twenty miles measured from a straight line drawn from the eastern point of *Lambay Island* to *Carnsore Point* on the coast of *Ireland*, outside of the exclusive fishery limits of the *British* islands, and all such bye-laws shall apply equally to all boats and persons on whom they may be binding.

It shall be lawful for Her Majesty, by Order in Council, to do all or any of the following things; namely,

(*a.*) To direct that such bye-laws shall be observed:

(*b.*) To impose penalties not exceeding twenty pounds for the breach of such bye-laws:

(*c.*) To apply to the breach of such bye-laws such (if any) of the enactments in force respecting the breach of the regulations respecting *Irish* oyster fisheries within the exclusive fishery limits of the *British* islands, and with such modifications and alterations as may be found desirable:

(*d.*) To revoke or alter any Order so made.

Provided that the length of close time prescribed by any such Order shall not be shorter than that prescribed for the time being by the *Irish* Fishery Commissioners in respect of beds or banks within the exclusive fishery limits of the *British* islands.

Every such Order shall be binding on all *British* sea-fishing boats, and on any other sea-fishing boats in that behalf specified in the Order, and on the crews of such boats.

LXVIII. On the coast of *Cornwall*, except so much of the north coast as lies to the east of *Trevose Head*, no person between the twenty-fifth of *July* and twenty-fifth of *November* in any year—

(*a*) shall, from sunrise to sunset, within the distance of two miles from the coast, measured from low-water mark (whether in bays or not), use a drift net or trawl net, or

(*b.*) shall, within half-a-mile of any sea-fishing boat stationed for

seine-fishing, anchor any sea-fishing or other boat (not being a boat engaged in seine-fishing), or lay, set, or use any net, boulter, or implement of sea-fishing (except for the purpose of seine-fishing):

Any person who acts in contravention of this section shall be liable on summary conviction to a penalty not exceeding twenty pounds, which may be recovered in the same manner as a penalty for an offence against the fishery regulations of this Act.

LXIX. With respect to any Orders in Council made in pursuance of this Act, the following provisions shall have effect:

(1.) They shall be published in the *London Gazette*, or otherwise published in such manner as the Board of Trade may direct for such sufficient time before they come into force as to prevent inconvenience:

(2.) They may be proved in any legal proceeding by the production of a copy of the Gazette containing the said advertisement, or of a copy of the orders or regulations purporting to be printed by the printer to Her Majesty.

LXX. The enactments in this Act which are restricted in terms to the seas outside the exclusive fishery limits of the *British* islands or to any particular part of the *British* islands and the seas adjoining the same shall apply only to those seas and such part, but, save as aforesaid, this Act shall apply to the seas adjoining the coasts of *France* specified in Article Three of the First Schedule to this Act outside of the exclusive fishery limits of *France*, and to the whole of the *British* islands as defined by this Act, and to the seas surrounding the same, whether within or without the exclusive fishery limits of the *British* islands, and the Royal Courts of *Guernsey* and *Jersey* shall register this Act in their respective Courts.

Provided that nothing in this Act relating to oyster or mussel fisheries, or to oysters or mussels, shall in any way whatever alter, interfere with, or affect the jurisdiction which the *Irish* Fishery Commissioners would have power to exercise over the seas surrounding *Ireland* and over the oyster fisheries and oyster beds in those seas if this Act had not passed:

LXXI. The enactments described in the second schedule to this Act are hereby repealed:

Provided that—

1st. This repeal shall not affect the validity or invalidity of anything already done or suffered, or any right or title conferred by or in pursuance of any enactment hereby repealed, or already acquired or accrued, or any remedy or proceeding in respect thereof, or any proof of any past act or thing, or any offence committed before the commencement of this Act, or any penalty or proceeding in respect thereof:

2d. This repeal shall not revive or restore any jurisdiction, toll, imposition, office, duty, bounty, franchise, liberty, custom, privilege, restriction, exemption, usage, or practice not now existing or in force.

SCHEDULES referred to in the foregoing Act.

FIRST SCHEDULE.

CONVENTION between HER MAJESTY and the EMPEROR OF THE FRENCH, relative to FISHERIES in the SEAS between GREAT BRITAIN and FRANCE.

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and His Majesty the Emperor of the French, having charged a Mixed Commission with preparing a revision of the Convention of the 2d of August 1839, and of the regulation of June 23, 1843, relative to the fisheries in the seas situated between Great Britain and France; and the members of that Commission having agreed upon certain arrangements which experience has shown would be useful, and which appear to them such as will advantageously modify and complete the former arrangements in the common interest of the fishermen of the two countries; their said Majesties have judged it expedient that the arrangements proposed by the said Commission should be sanctioned by a new Convention, and have for that purpose named as their Plenipotentiaries, that is to say,

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Right Honourable Richard Bickerton Pemell, Lord Lyons, a Peer of the United Kingdom, a member of Her Britannic Majesty's most Honourable Privy Council, Knight Grand Cross of the most Honourable Order of the Bath, Her Britannic Majesty's Ambassador Extraordinary and Plenipotentiary to His Majesty the Emperor of the French.

And His Majesty the Emperor of the French, Leonel, Marquis de Moustier, Grand Cross of the Imperial Order of the Legion of Honour, etc., etc., etc., His Minister and Secretary of State for Foreign Affairs;

Who, after having communicated to each other their full powers, found in good and due form, have agreed upon and concluded the following Articles:—

ARTICLE I.

British fishermen shall enjoy the exclusive right of fishery within the distance of three miles from low water mark, along the whole extent of the coasts of the British islands; and French fishermen shall enjoy the exclusive right of fishery within the distance of three miles from low water mark along the whole extent of the coast of France; the only exception to this rule being that part of the coast of France which lies between Cape Carteret and Point Meinga.

The distance of three miles fixed as the general limit for the exclusive right of fishery upon the coasts of the two countries shall, with respect to bays, the mouths of which do not exceed ten miles in

width, be measured from a straight line drawn from headland to headland.

The miles mentioned in the present Convention are geographical miles, whereof sixty make a degree of latitude.

ARTICLE II.

It is agreed that the lines drawn between the points designated by the letters A, B, C, D, E, F, G, H, I, K, on the chart annexed to the present Convention, and signed by the respective Plenipotentiaries, shall be acknowledged by the High Contracting Parties, as defining from Point Meinga to Cape Carteret, the limits between which and the French shore the right of fishery shall be reserved exclusively to French fishermen, and these lines are as follows; that is to say,

The first line runs from the point A, three miles from low water mark (Point Meinga bearing south) to the point B, of which the landmarks are Agon Tower on with the clump of trees upon Mount Huchon, and the summit of Gros Mont in a line with the Semaphore on Grand Isle.

The second line runs from the said point B towards Agon Tower and the clump of trees upon Mount Huchon, in the direction north sixty-four degrees east, until, at the point C, it brings the windmill of Lingreville to bear due east.

The third line runs from point C due east towards Lingreville windmill, until the Grand Huguenant is brought to bear on the Etat Rock at point D.

The fourth line runs from point D northward (keeping the Grand Huguenant in one with the Etat Rock) until it intersects at E a line whose landmarks are Agon Tower on with Coutances Cathedral.

The fifth line runs eastward from point E to point F, where the steeple of Pirou is brought to bear in a line with the Sennequet lighthouse.

The sixth line runs from point F due north to point G, where the steeple of Blainville is brought in a line with the Sennequet lighthouse.

The seventh line runs from point G in the direction of Pirou steeple to point H, where the lighthouse on Cape Carteret bears north twenty-four degrees west.

The eighth line runs from point H to point I nearly abreast of Port Bail; point I having for landmarks the fort of Port Bail in a line with the steeple of Port Bail.

And finally, the ninth line runs from point I to the Three Grunes at point K, where Cape Carteret bears east ten degrees north, in a line with Barneville steeple.

It is further agreed that all the bearings specified in the present article are to be taken according to the true meridian, and not according to the magnetic meridian.

Article III.

The arrangements of the present Convention shall apply beyond the fishery limits of both countries, as defined by the preceding articles, to the seas surrounding and adjoining Great Britain and Ireland, and adjoining the coasts of France between the frontiers of Belgium and Spain. The rules respecting oyster fishery shall, however, be observed only in the seas comprised within the limits hereinafter described.

Article IV.

All British and French fishing boats shall be lettered and numbered.

In the United Kingdom there shall be a series of numbers for the fishing boats belonging to each collectorship of Customs, and in France a series of numbers for the fishing boats belonging to each district of Maritime Registry: and to these numbers shall be prefixed a letter (or letters) to be designated by the Board of Customs in the United Kingdom, and by the Ministry of Marine in France.

Article V.

The letter (or letters) and number shall be placed on each bow of the boat, 3 or 4 inches (8 or 10 centimetres French) below the gunwale, and they shall be painted in white oil colour on a black ground.

For boats of 15 tons burthen and upwards the dimensions of the letters and numbers shall be 18 inches (45 centimetres French) in height, and $2\frac{1}{2}$ inches (6 centimetres French) in breadth.

For boats of less than 15 tons burthen, the dimensions shall be 10 inches (25 centimetres French) in height, and $1\frac{3}{4}$ inches (4 centimetres French) in breadth.

The same letter (or letters) and number shall also be painted on each side of the mainsail of the boat, in black oil colour on white sails, and in white oil colour on tanned or black sails. Such letter (or letters) and number on the sails shall be one-third larger in every way than those placed on the bows of the boat.

The name of each fishing boat, and that of the port to which she belongs, shall be painted in white oil colour on a black ground on the stern of the boat, in letters which shall be at least 3 inches (8 centimetres French) in height and $\frac{1}{2}$ inch (12 millimetres French) in breadth.

The letters, numbers, and names placed on the boats and on their sails shall not be effaced, covered, or concealed in any manner whatsoever.

Article VI.

All the buoys, barrels, and principal floats of each net, and all other implements of fishery, shall be marked with the same letter (or letters) and numbered as those of the boats to which they belong.

These letters and numbers shall be large enough to be easily distinguished. The owners of the nets or other fishing implements may further distinguish them by any private marks they judge proper.

Article VII.

The letters and numbers of British fishing boats shall, after having been entered in the registry book kept at the collectorship of customs, be inserted on the licences or other official papers of those boats.

The letters and numbers of French fishing boats shall, after having been entered in the registry book kept at the Maritime Registry Office, be inserted on the muster rolls of those boats.

Article VIII.

The licences or other official papers of Britsh fishing boats, and the muster rolls of French fishing boats, shall contain the description and tonnage of each boat, as well as the names of its owner and of its master.

Article IX.

The fishermen of both countries shall, whenever required, exhibit their licences or other official papers, or their muster rolls, to the commanders of the fishery cruizers, and to all other persons of either country appointed to superintend the fisheries.

Article X.

Fishing of all kinds, by whatever means and at all seasons, may be carried on in the seas lying beyond the fishery limits which have been fixed for the two countries, with the exception of that for oysters, as hereinafter expressed.

Article XI.

From the 16th of June to the 31st of August inclusive, fishing for oysters is prohibited outside the fishery limits which have been fixed for the two countries, between a line drawn from the North Foreland Light to Dunkirk, and a line drawn from the Land's End to Ushant.

During the same period and in the same part of the Channel, no boat shall have on board any oyster dredge, unless the same be tied up and sealed by the Customs authorities of one of the two countries in such a manner as to prevent its being made use of.

ARTICLE XII.

No boat shall anchor between sunset and sunrise on grounds where drift net fishing is actually going on.

This prohibition shall not apply to anchorings which may take place in consequence of accidents, or any other compulsory circumstances; but in such case the master of the boat thus obliged to anchor shall hoist, so that they shall be seen from a distance, two lights placed horizontally about 3 feet (1 metre French) apart, and shall keep those lights up all the time the boat shall remain at anchor.

ARTICLE XIII.

Boats fishing with drift nets shall carry on one of their masts two lights, one over the other, 3 feet (1 metre French) apart.

These lights shall be kept up during all the time their nets shall be in the sea between sunset and sunrise.

ARTICLE XIV.

Subject to the exceptions or additions mentioned in the two preceding Articles, the fishing boats of the two countries shall conform to the general rules respecting lights which have been adopted by the two countries.

ARTICLE XV.

Trawl boats shall not commence fishing at a less distance than three miles from any boat fishing with drift nets.

If trawl boats have already shot their nets, they must not come nearer to boats fishing with drift nets than the distance above mentioned.

ARTICLE XVI.

No boat fishing with drift nets shall shoot its nets so near to any other boat which has already shot its nets on the fishing ground as to interfere with its operations.

ARTICLE XVII.

No decked boat fishing with drift nets shall shoot its nets at a less distance than a quarter of a mile from any undecked boat which is already engaged in fishing.

ARTICLE XVIII.

If the spot where fishing is going on should be so near to the fishery limits of one of the two countries that the boats of the other

country would, by observing the regulations prescribed by Articles XV., XVI., and XVII. preceding, be prevented from taking part in the fishery, such boats shall be at liberty to shoot their nets at a less distance than that so prescribed; but in such case the fishermen shall be responsible for any damage or losses which may be caused by the drifting of their boats.

Article XIX.

Nets shall not be set or anchored in any place where drift net fishing is actually going on.

Article XX.

No one shall make fast or hold on his boat to the nets, buoys, floats, or any part of the fishing tackle belonging to another boat.

No person shall hook or lift up the nets, lines, or other fishing implements belonging to another person.

Article XXI.

When nets of different boats get foul of each other, the master of one boat shall not cut the nets of another boat except by mutual consent, and unless it be found impossible to clear them by other means.

Article XXII.

All fishing boats, all rigging gear or other appurtenances of fishing boats, all nets, buoys, floats, or other fishing implements whatsoever, found or picked up at sea, shall, as soon as possible, be delivered to the Receiver of Wreck if the article saved be taken into the United Kingdom, and to the Commissary of Marine if the article saved be taken into France.

The Receiver of Wreck or the Commissary of Marine, as the case may be, shall restore the articles saved to the owners thereof, or to their representatives.

These functionaries shall fix the amount which the owners shall pay to the salvors.

Article XXIII.

The execution of the regulations concerning lights and signals, licences, muster rolls, and official papers, the lettering and numbering of boats and implements of fishing, is placed, with respect to the fishermen of each of the two nations, under the exclusive superintendence of the cruizers and agents of their own nation.

Nevertheless the commanders of the cruizers of one of the two nations shall acquaint the commanders of the cruizers of the other nation with any infractions of the above-mentioned regulations com-

mitted by the fishermen of such other nation which may come to their knowledge.

Article XXIV.

All infractions of the regulations concerning the placing of boats on the fishing ground, the distances to be observed between them, the prohibition of oyster fishing during a portion of the year, and concerning every other operation connected with the act of fishing, and more particularly concerning circumstances likely to cause damage, shall be taken cognizance of by the cruizers of either nation, whichever may be the nation to which the fishermen guilty of such infractions may belong.

Article XXV.

The commanders of cruizers of either country shall exercise their judgment as to the causes of any infractions brought to their knowledge, or as to damage arising from any cause whatever committed by British or French fishing boats in the seas beyond the fishery limits which have been fixed for the two countries; they may detain the offending boats and take them into the port nearest the scene of the occurrence, in order that the infraction or damage may be there duly established, as well by comparing the declarations and counter-declarations of the parties interested as by the testimony of those who were present.

Article XXVI.

When the offence shall not be such as to require exemplary punishment, but shall nevertheless have caused damage to any fisherman, the commanders of the cruizers shall be at liberty, should the circumstances admit of it, to arbitrate at sea between the parties concerned. On refusal of the offenders to defer to their arbitration the said commanders shall take both them and their boats into the nearest port, to be dealt with as stated in the preceding Article.

Article XXVII.

Every fishing boat which shall have been taken into a foreign port in conformity with the two preceding Articles shall be sent back to her own country for trial as soon as the infraction for which she may have been detained shall have been duly established. Neither the boat nor her crew shall, however, be detained in the foreign port more than three clear days.

Article XXVIII.

The depositions, minutes of proceedings, and all other documents concerning the infraction, after having been authenticated by the Col-

lector of Customs in the United Kingdom, or by the Commissary of Marine in France, shall be transmitted by that functionary to the Consular Agent of his nation residing in the port where the trial is to take place.

Such Consular Agent shall communicate those documents to the Collector of Customs, or to the Commissary of Marine, as the case may be; and if, after having conferred with that functionary, it shall be necessary for the interest of his countrymen, he shall proceed with the affair before the competent tribunal or magistrates of the country.

Article XXIX.

In both countries the competent Court or magistrate shall be empowered to condemn to a fine of at least eight shillings (ten francs), or to imprisonment for at least two days, persons who may infringe the regulations of the Convention concerning—

1. The close season for oysters, and illegal possession of dredges on board during that season;
2. The letters, numbers, and names to be placed on the boats, sails, nets, and buoys;
3. The licences or muster rolls;
4. The flags and lights to be carried by the boats;
5. The distances to be observed by the boats between each other;
6. The placing and anchoring of vessels and boats;
7. The placing and shooting of nets and the taking them up;
8. The clearing of nets;
9. The placing of buoys upon nets.

In case of repetition of the offence, the amount of fine or period of imprisonment may be doubled.

Article XXX.

In all cases of assault committed or of damage or loss inflicted at sea by fishermen of either country upon fishermen of the other country, the Courts of the country to which the offenders belong shall condemn the latter to a fine of at least eight shillings (10 francs), or to imprisonment for at least two days. They may, moreover, condemn the offenders to pay adequate compensation for the injury.

Article XXXI.

Fishing boats of either of the two countries shall be admitted to sell their fish in such ports of the other country as may be designated for that purpose, on condition that they conform to the regulations mutually agreed upon. Those regulations, together with a list of the ports, are annexed to the present Convention; but without prejudice to the opening by either country of any additional ports.

Article XXXII.

The fishing boats of the one country shall not enter within the fishery limits fixed for the other country, except under the following circumstances:—

1. When driven by stress of weather or by evident damage.
2. When carried in by contrary winds, by strong tides, or by any other cause beyond the control of the master and crew.
3. When obliged by contrary winds or tide to beat up in order to reach their fishing ground; and when from the same cause of contrary wind or tide they could not, if they remained outside, be able to hold on their course to their fishing ground.
4. When, during the herring fishing season, the herring boats of the one country shall find it necessary to anchor under shelter of the coasts of the other country, in order to await the opportunity for proceeding to their fishing ground.
5. When proceeding to any of the ports of the other country open to them for the sale of fish in accordance with the preceding Article; but in such cases they shall never have oyster dredges on board.

Article XXXIII.

When fishing boats, availing themselves of the privilege specified in Article XXXI., shall have oysters on board, they shall not carry any dredges or other implement for taking oysters.

Article XXXIV.

The commanders of cruizers may authorize boats belonging to their own country to cross the exclusive fishery limits of the other country, whenever the weather is so threatening as to compel them to seek shelter.

Article XXXV.

Whenever, owing to any of the exceptional circumstances specified in the three preceding Articles, the fishing boats of either country shall be in the ports or within the fishery limits fixed for the other country, the masters of such boats shall immediately hoist a blue flag two feet (sixty centimetres French) high, and three feet (one metre French), long, and shall keep that flag flying at the masthead so long as they remain in such ports or within such limits. The flag shall be hauled down as soon as the boat is outside the said limits.

Such boats must return outside the said limits as soon as the exceptional circumstances which obliged them to enter shall have ceased.

Article XXXVI.

The commanders of the cruizers of each of the two countries, and

all officers or other agents appointed to superintend fisheries, shall exercise their judgment as to infractions of the regulations with regard to the fishery limits, and when they shall be satisfied of the fact of the infraction they may detain the boats of the offenders, or cause them to be detained, and may take them, or cause them to be taken, into port, where, upon clear proof of the offence, such boats may be condemned by the competent Court or magistrate to a fine not exceeding £10 (250 francs). In default of payment such boats may be detained for a period not exceeding three months.

In case of repetition of the offence the fine may be doubled.

Article XXXVII.

The proceedings and trial in cases of infraction of the provisions of the present Convention shall take place as speedily and as summarily as the laws in force will permit.

Article XXXVIII.

The terms 'British Islands' and 'United Kingdom,' employed in this Convention, shall include the islands of Jersey, Guernsey, Alderney, Sark, and Man, with their dependencies.

Article XXXIX.

Her Britannic Majesty engages to recommend to Parliament to pass an Act to enable Her to carry into execution such of the arrangements contained in the present Convention as require legislative sanction. When such an Act shall have been passed, the Convention shall come into operation from and after a day to be then fixed upon by the two High Contracting Parties. Due notice shall be given in each country by the Government of that country of the day which may be so fixed upon.

Article XL.

The Convention shall continue in force for 10 years from the day on which it may come into operation, and if neither party shall, 12 months before the expiration of the said period of 10 years, give notice of its intention to terminate its operation, the Convention shall continue in force one year longer, and so on from year to year, until the expiration of one year's notice from either party for its termination.

The High Contracting Parties, however, reserve to themselves the power to make, by mutual consent, any modification in the Convention which experience shall have shown to be desirable, provided it is not inconsistent with the principles on which it is based.

ARTICLE XLI.

The Convention concluded between the High Contracting Parties on the 2d of August 1839, and the Regulations of the 23d of June 1843, shall continue in force until the day when, as provided in Article XXXIX., the present Convention shall come into operation, and shall then altogether cease and determine.

ARTICLE XLII.

The present Convention shall be ratified, and the ratifications shall be exchanged as soon as possible.

In witness whereof the respective Plenipotentiaries have signed the same, and have affixed thereto the seals of their arms.

Done at Paris, the 11th of November, in the year of our Lord 1867.

(L.S.) LYONS.
(L.S.) MOUSTIER.

ADDITIONAL ARTICLE.

It is agreed that Article XXXI. of the Convention signed this day shall not come into operation until the two Contracting Parties shall have come to a further understanding on the subject. Due notice shall be given of the day that may be fixed upon for its coming into operation.

The present Additional Article shall have the same force and validity as if it were inserted, word for word, in the Convention signed this day. It shall be ratified, and the ratifications shall be exchanged at the same time as those of the Convention.

In witness whereof the respective Plenipotentiaries have signed the same, and have affixed thereto the seals of their arms.

Done at Paris, the 11th of November, in the year of our Lord 1867.

(L.S.) LYONS.
(L.S.) MOUSTIER.

Declaration annexed to the Convention of November 11, 1867.

The fishermen of each country shall not be allowed to land or discharge their fish in the other country, except at places where there is a Custom House, and during office hours.

Immediately upon their arrival, and in all cases before they commence the discharge of their cargo, they shall present their muster roll, or licence, or official paper, to the proper officer of Customs, and shall pass an entry at the Custom House stating as nearly as possible the quantity of fish which they have on board.

If the master of a fishing boat cannot write, the officer of Customs shall fill up for him the form required, and the master shall affix his mark thereto.

The Custom House officers shall have the power to board and

search the fishing boats of the other country in the manner directed by the Customs laws.

During their stay in the ports of the other country, the fishermen of either country shall, if required to do so by the Customs authorities, deposit in a warehouse or in the Custom House, until their departure, all stores subject to duty, which shall not be necessary for their daily consumption. No charge shall be made for such warehousing.

The ports enumerated in the subjoined list, where there is a Custom House establishment, are those that shall be open in each country to the fishermen of the other country. In case the Customs establishment at any of those ports should be abolished, notice thereof shall be given to the Government of the other country.

LIST of the PORTS in the UNITED KINGDOM open for the Importation of Fish by FRENCH FISHING BOATS.

In England.

Bristol.	Liverpool.	Ramsgate
Cardiff.	London.	Shields.
Dover, C.	Lowestoft.	Shoreham, C.
Folkestone, C.	Middlesborough.	Southampton, C.
Falmouth, C.	Newcastle.	Sunderland.
Grimsby.	Newhaven, C.	Swansea.
Hartlepool.	Newport.	Weymouth, C.
Harwich.	Portsmouth, C.	Whitby.
Hull.	Plymouth, C.	Yarmouth.

In Scotland.

Aberdeen.	Greenock.	Wick.
Glasgow.	Leith.	

In Ireland.

Belfast.	Dublin.	Waterford.
Cork.	Galway.	

In the Channel Islands.

Jersey, C. Guernsey, C.

The Ports in the Channel are marked with a C.

LIST of the PORTS of the FRENCH EMPIRE open for the Importation of Fish by BRITISH FISHING BOATS.

Directions.	——	*Directions.*	——
DUNKERQUE	Gravelines	Saint Brieuc—*suite.*	Le Légué.
	Dunkerque.		Dahonet.
			Erquy.
BOULOGNE .	Hourdel.		Le Guildo.
	St Valéry-sur-Somme.		Plouer.
	Crotoy.		Dinan.
	Abbeville.		Saint Suliac.
	Berck (plage maritime).		Saint Servan.
	Etaples.		Saint Malo.
	Boulogne.		La Houlle.
	Calais.		Le Vivier
LE HAVRE .	Harfleur.	BREST . .	Quimperlé.
	Le Havre.		Douélan.
	Fécamp.		Pontaven.
	St Valéry-en-Caux.		Concarneau.
	Dieppe.		Quimper.
	Tréport.		Pont l'Abbé.
	Eu.		Audierne.
			Douarnenez.
ROUEN . .	Rouen.		Morgat.
	Croisset.		Camaret.
	Duclair.		Port Launay.
	Caudebec.		Le Faon.
			Landerneau.
CAEN . . .	Isigny.		Brest.
	Port-en-Bessin.		Le Conquet.
	Courceulles.		Labrevrach.
	Caen.		Roscoff.
	Ouistreham.		Morlaix.
	Trouville.		
	Honfleur.	VANNES . .	Redon.
	Pont-Audemer.		La Roche-Bernard.
			Tréhiguier.
SAINT LÔ . .	Granville.		Billiers.
	Regneville.		Pénerf.
	Portbail (Havre).		Ambon.
	Dielette.		Vannes.
	Carentan.		Belle-Croix.
	Cherbourg.		Sarzeau.
	Barfleur.		Suscinio.
	Saint Vaast.		Saint Armel.
	Omonville.		Novalo.
			Quatre-vents.
SAINT BRIEUC	Lannion.		Ile d'Ars (Ile du Morbihan).
	Perros.		
	Tréguier.		Port Novalo.
	Lézardrieux.		Larmorbaden.
	Pontrieux.		Locmariaquer.
	Paimpol.		Auray.
	Portrieux.		Rochdu.
	Binic.		La Trinité.

Directions.	——	*Directions.*	——
Vannes—*suite.*	Carnac.	La Rochelle—*suite.*	St Pierre (Ile d'Oléron).
	Porthaliguen.		St Georges (idem).
	Palais (Ile).		St Denis (idem).
	Etel.		Bronage (port sur canal).
	Port Louis.		Moëze.
	Hennebon.		Charente.
	Lorient.		Rochefort.
	Kernevel.		Fouran.
	Groix (Ile).		Ile d'Aix (Ile).
			La Rochelle.
Nantes . .	Noirmoutiers.		Lauzières.
	St Gilles.		Marans.
	Ile d'Yeu.		La Flotte (Ile de Ré).
	La Barre-de-Mont (port sur canal).		St Martin (idem).
			Loix (idem).
	Beauvoir (idem).		Ars (idem).
	Boin (idem).		Luçon (port sur canal).
	Bourgneuf.		L'Aiguillon.
	Pornic.		Les Sables.
	Paimbœuf.		Saint Martin de Brem.
	Saint Nazaire.		
	Nantes.	Bordeaux .	La Teste.
	Chantenay.		Gujan.
	La Basse-Indre.		Certes.
	Port Nichet.		Le Verdon.
	Pouliguen.		La Fossé (port sur canal).
	Le Croisic.		
	La Turballe.		Pauillac.
	Le Rosais.		Bordeaux.
			Libourne.
La Rochelle	La Tremblade.		Plaigne.
	Mornac.		Bourg.
	L'Eguille.		Blaye.
	Le Gua.		Montagne.
	Nieulle (port sur canal).		Les Meschers.
	Lusac (idem).		Royan.
	Marennes (idem).		
	Le Chapus.	Bayonne .	Saint Jean de Luz.
	Le Château (Ile d'Oléron).		Bayonne.

In witness whereof the respective Plenipotentiaries have signed these Annexes to the Convention concluded this day, and have affixed thereto the seals of their arms.

At Paris, the 11th November 1867.

(L.S.) Lyons.
(L.S.) Moustier.

SECOND SCHEDULE.

A description of a portion of an Act is inclusive of the section first or last mentioned, as forming the beginning or as forming the end of the portion comprised in the description.

Date of Act.	*Title of Act.*
4 Hen. VII. c. 21. .	An act for ye preservation of the frye of Fyshe.
7 Hen. VII. c. 9. [In Statutes of the Realm only.]	Orford.
5 Eliz. c. 5. . . .	An Act touching certayne Politique Constitutions made for the Maintenance of the Navye.
13 & 14 Car. II. c. 28. .	An Act for the Regulation of the Pilchard Fishing in the Counties of Devon and Cornwall.
10 & 11 Will. III. c. 24. [10 Will. III. c. 13. in Statutes of the Realm.]	An Act for making Billingsgate a free Market for the Sale of Fish.
9 Anne, c. 26. . . [c. 28. in Statutes of the Realm].	An Act for the better Preservation and Improvement of the Fishery within the River of Thames, and for regulating and governing the Company of Fishermen of the said River.
1 Geo. I. s. 2. c. 18. .	An Act for the better preventing fresh Fish taken by Foreigners being imported into this Kingdom; and for the Preservation of the Fry of Fish; and for the giving Leave to import Lobsters and Turbets in Foreign Bottoms; and for the better Preservation of Salmon within several Rivers in that Part of this Kingdom called England.
2 Geo. II. c. 19. . .	An Act for regulating, well-ordering, governing, and improving the Oyster Fishery in the River Medway and waters thereof, under the Authority of the Mayor and Citizens of the City of Rochester in the County of Kent.
29 Geo. II. c. 23. . . In part.	An Act for encouraging the Fisheries in that } In part; Part of Great Britain called Scotland . } namely, Except Sections One and Seventeen, so far as they relate to Scotland.
33 Geo. II. c. 27. . .	An Act to repeal so much of an Act passed in the Twenty-ninth Year of His present Majesty's Reign, concerning a free Market for Fish at Westminster, as requires Fishermen to enter their Fishing Vessels at the Office of the Searcher of the Customs at Gravesend; and to regulate the Sale of Fish at the First Hand in the Fish Markets at London and Westminster; and to prevent Salesmen of Fish buying Fish to sell again on their own Account; and to allow Bret and Turbot, Brill and Pearl, although under the respective Dimensions mentioned in a former Act, to be imported and sold; and to punish Persons who shall take or sell any Spawn, Brood, or Fry of Fish, unsizeable Fish, or Fish out of Season, or Smelts under the Size of Five Inches, and for other Purposes.

Date of Act.	Title of Act.
2 Geo. III. c. 15. In part.	An Act for the better supplying the Cities of London and Westminster with Fish, and to reduce the present exorbitant Price thereof and to protect and encourage Fishermen . . . . . Except Section Seven. — In part; namely,
11 Geo. III. c. 31. In part.	An Act for the Encouragement of the White Herring Fishery . . . . . Except Sections Eleven to Thirteen. — In part; namely,
19 Geo. III. c. 26.	An Act to continue and amend an Act made in the Eleventh Year of His present Majesty's Reign, intituled 'An Act for the Encouragement of the White Herring 'Fishery.'
26 Geo. III. c. 45.	An Act to continue and amend an Act made in the Twenty-fifth Year of the Reign of His present Majesty, for the Encouragement of the Pilchard Fishery, by allowing a further Bounty upon Pilchards taken, cured, and exported.
26 Geo. III. c. 81. In part.	An Act for the more effectual Encouragement of the British Fisheries . . . . . Except Section Nineteen. — In part; namely,
27 Geo. III. c. 10.	An Act to extend the Provisions of an Act made in the Twenty-sixth Year of His present Majesty's Reign, intituled 'An Act for the more effectual Encouragement 'of the British Fisheries.'
30 Geo. III. c. 54.	An Act for vesting the Estates and Property of the Trustees of Westminster Fish Market in the Marine Society for the Purposes therein mentioned, and for discontinuing the Powers of the said Trustees.
31 Geo. III. c. 45.	An Act for the Encouragement of the Pilchard Fishery, by allowing a further Bounty upon Pilchards taken, cured, and exported.
35 Geo. III. c. 54.	An Act for the Encouragement of the Mackerel Fishery.
35 Geo. III. c. 56.	An Act to continue and amend an Act made in the Twenty-sixth Year of the Reign of His present Majesty, intituled 'An Act for the more effectual Encouragement of the British Fisheries.'
36 Geo. III. c. 77.	An Act to explain and amend an Act made in the last Session of Parliament, intituled 'An Act for the Encouragement of the Mackerel Fishery.'
36 Geo. III. c. 118.	An Act to authorise the Sale of Fish at Billingsgate by Retail.
37 Geo. III. c. 94.	An Act to continue an Act made in the Thirty-first Year of the Reign of His present Majesty, intituled 'An 'Act for the Encouragement of the Pilchard Fishery, 'by allowing a further Bounty upon Pilchards taken, 'cured, and exported.'
38 Geo. III. c. 58.	An Act to continue until the First Day of March One thousand seven hundred and ninety-nine an Act made in the Thirty-fifth Year of the Reign of His present Majesty, intituled 'An Act to continue and amend 'an Act made in the Twenty-sixth year of the 'Reign of His present Majesty, intituled "An Act "for the more effectual Encouragement of the British "Fisheries."'

Date of Act.	*Title of Act.*	
39 Geo. III. c. 100. In part.	An Act to revive and continue until the End of the next Session of Parliament an Act made in the Thirty-fifth Year of the Reign of His present Majesty, to continue and amend an Act made in the Twenty-sixth Year of the Reign of His present Majesty, intituled 'An Act for the more effectual En- 'couragement of the British Fisheries;' and to amend an Act made in the Twenty-sixth Year of the Reign of His present Majesty, for extending the Fisheries and improving the Sea Coast of this Kingdom. . . Section One.	In part; namely,
39 & 40 Geo. III. c. 85.	An Act to continue until the Fifth Day of April One thousand eight hundred and one, and amend, An Act of the last Session of Parliament, for continuing several Acts for the Encouragement of the British Fisheries.	
39 & 40 Geo. III. c. 107.	An Act to permit until Six Weeks after the Commencement of the next Session of Parliament the Importation of Swedish Herrings into Great Britain.	
41 Geo. III. sess. 2. c. 97.	*An Act the Title of which begins with the Words* 'An 'Act to continue several Laws relating to encouraging 'the Fisheries,' *and ends with the Words* 'as relates 'to ascertaining the Strength of Spirits by Clarke's 'Hydrometer.'	
41 Geo. III. sess. 2. c. 99.	An Act for granting Bounties for taking and bringing Fish to the Cities of London and Westminster, and other Places in the United Kingdom.	
42 Geo. III. c. 3. . .	An Act to revive and continue until the Twenty-fifth Day of March One thousand eight hundred and three so much of an Act made in the Forty-first Year of the Reign of His present Majesty as relates to permitting the Use of Salt Duty-free in preserving of Fish, and to discontinuing the Bounty payable on White Herrings exported, and to indemnify all Persons who have issued or acted under any Orders for delivering Salt Duty-free for the Purposes in the said Act mentioned.	
42 Geo. III. c. 19. .	An Act to amend so much of an Act made in the Twenty-ninth Year of the Reign of His late Majesty King George the Second, intituled 'An Act for explaining, 'amending, and rendering more effectual an Act made 'in the Twenty-second Year of His present Majesty's 'Reign, intituled "An Act for making a free Market "for the Sale of Fish in the City of Westminster, and "for preventing the forestalling and monopolising of "Fish, and for allowing the Sale of Fish, under the "Dimensions mentioned in a Clause contained in an "Act of the First Year of His late Majesty's Reign, "in case the same are taken with a Hook," as relates 'to the Sale of Eels.'	
42 Geo. III. c. 79. .	An Act to revive and continue until the Fifth Day of April One thousand eight hundred and four, and to amend, several Acts passed in the Twenty-seventh, Thirty-fifth, and Thirty-ninth Years of His present Majesty's Reign, for the more Effectual encouragement of the British Fisheries; and to continue until the	

Date of Act.	*Title of Act.*
	Fourteenth Day of June One thousand eight hundred and three, and from thence to the End of the then next Session of Parliament, so much of an Act of the Sixth Year of the Reign of His present Majesty as relates to the prohibiting the Importation of Foreign wrought Silks and Velvets.
42 Geo. III. c. 88 . .	An Act for repealing so much of an Act made in the Second Year of the Reign of His present Majesty, intituled 'An Act for the better supplying the Cities of 'London and Westminster with Fish, and to reduce 'the present exorbitant Price thereof; and to protect 'and encourage Fishermen,' as limits the Number of Fish to be sold by Wholesale within the said City of London, and for the better Regulation of the Sale of Fish by Wholesale in the Market of Billingsgate within the said City.
43 Geo. III. c. 29. .	*An Act the Title of which begins with the Words* 'An 'Act to revive and continue,' *and ends with the Words* 'to the End of the then next Session of Parliament.'
44 Geo. III. c. 86. .	An Act for reviving, amending, and further continuing several Laws relating to the more effectual Encouragement of the British Fisheries until the Fifth Day of April One thousand eight hundred and six, and to the Encouragement of the Trade and Manufactures of the Isle of Man, to the improving the Revenue thereof; and the more effectual Prevention of smuggling to and from the said Island, until the Fifth Day of July One thousand eight hundred and five.
45 Geo. III. c. 102. .	An Act to revive and continue an Act made in the Thirty-first Year of His present Majesty, intituled 'An Act 'for the Encouragement of the Pilchard Fishery by 'allowing a further Bounty upon Pilchards taken, 'cured, and exported.'
46 Geo. III. c. 34. .	An Act for further continuing until the Twenty-fifth Day of March One thousand eight hundred and seven an Act made in the Thirty-ninth Year of His present Majesty, for the more effectual Encouragement of the British Fisheries.
47 Geo. III. sess. 2. c. 51.	An Act to revive and continue until the Twenty-fifth Day of March One thousand eight hundred and eight an Act of the Thirty-ninth Year of His present Majesty, for the more effectual Encouragement of the British Fisheries.
47 Geo. III. sess. 2. c. 67.	An Act to permit, until the End of the next Session of Parliament, the Importation of Swedish Herrings into Great Britain.
48 Geo. III. c. 86. .	An Act to revive and continue until the Twenty-fifth Day of March One thousand eight hundred and nine an Act of the Thirty-ninth Year of His present Majesty for the more effectual Encouragement of the British Fisheries.
48 Geo III. c. 110. In part. .	An Act for the further Encouragement and better Regulation of the British White Herring Fishery until the First Day of June One thousand eight hundred and thirteen, and from thence to the End of the then next Session of Parliament . . . . . In part; namely,

Date of Act.	*Title of Act.*
	Except Sections 4, 5, 7, 9, 10, 11, 12, 18, 31, 32, 34 to 45, 47 to 50, 51, 53, 54, and 56 to 60, so far as they relate to Scotland, and are not inconsistent with this Act.
50 Geo. III. c. 54.	An Act to revive and continue until the Twenty-fifth Day of March One thousand eight hundred and eleven an Act of the Thirty-ninth Year of His present Majesty, for the more effectual Encouragement of the British Fisheries.
50 Geo. III. c. 108. In part.	An Act to amend and enlarge the Powers of an Act passed in the Second Year of His present Majesty, for the Encouragement of the Fisheries of this Kingdom, and the Protection of the Persons employed therein . In part; namely, Sections One to Four.
51 Geo. III. c. 34.	An Act for continuing the Premiums allowed to Ships employed in the Southern Whale Fishery.
51 Geo. III. c. 101.	An Act for amending an Act of the Forty-eight Year of His present Majesty, for regulating the British White Herring Fishery.
52 Geo. III. c. 42.	An Act for amending the Laws relating to the Allowance of the Bounties on Pilchards exported until the Twenty-fourth Day of June One thousand eight hundred and nineteen.
54 Geo. III. c. 102.	An Act to continue until the End of the next Session of Parliament several Acts relating to the British White Herring Fishery.
55 Geo. III. c. 94. In part.	An Act to continue and amend several Acts relating to the British White Herring Fishery In part; namely, Except Sections 1 to 4, 9 to 15, 17, 18, 20, 21, 23, 31 to 33, and 38 to 43, so far as they relate to Scotland, and are not inconsistent with this Act.
59 Geo. III. c. 77.	An Act to continue until the Twenty-fourth Day of June One thousand eight hundred and twenty-six an Act for amending the Laws relating to the Allowance of the Bounties on Pilchards exported.
1 Geo. IV. c. 82.	An Act to amend an Act of the Fifty-ninth Year of the Reign of His late Majesty King George the Third for the Encouragement and Improvement of the Irish Fisheries.
1 Geo. IV. c. 103	An Act for the further Encouragement and Improvement of the British Fisheries.
1 & 2 Geo. IV. c. 79. In part.	An Act to repeal certain Bounties granted for the Encouragement of the Deep Sea British White Herring Fishery, and to make further Regulations relating to the said Fishery . In part; namely, Except Section 9 and except Sections 3 and 5 so far as they relate to Scotland.
5 Geo. IV. c. 64. In part.	An Act to amend the several Acts for the Encouragement and Improvement of the British and Irish Fisheries . . . In part; namely, Sections 1 to 8.
7 Geo. IV. c. 34.	An Act to amend an Act of the Fifth Year of His present Majesty, for amending the several Acts for the Encouragement and Improvement of the British and Irish Fisheries.

Date of Act.	Title of Act.
11 Geo. IV. & 1 Will. IV. c. 54. . . . In part.	An Act to revive, continue, and amend several Acts relating to the Fisheries . . . In part; namely, So much as relates to England, and so much as is inconsistent with this Act.
4 & 5 Will. IV. c. 20. .	An Act to explain and amend an Act passed in the Thirty-third Year of the Reign of His late Majesty King George the Second, to regulate the conveyance and sale of Fish at first hand.
6 & 7 Vict. c. 79. .	An Act to carry into effect a Convention between Her Majesty and the King of the French concerning the Fisheries in the Seas between the British Islands and France.
14 & 15 Vict. c. 26. In part. .	An Act to amend the Acts relating to the British White Herring Fishery . . . In part; namely, Sections 5 and 6.
18 & 19 Vict. c. 101. .	An Act for the more effectual Execution of the Convention between Her Majesty and the French Government concerning the Fisheries in the Seas between the British Islands and France.
23 & 24 Vict. c. 92. In part. .	An Act to amend the Law relative to the Scottish Herring Fisheries . . . In part; namely, Sections 7, 11 to 13, and 25.
24 & 25 Vict. c. 72. In part. .	An Act to make further Provision for the Regulation of the British White Herring Fishery in Scotland . . . . In part; namely, Sections 2, 3, and 6, and so much of the Remainder of the Act as is inconsistent with this Act.
28 & 29 Vict. c. 22. In part. .	An Act to amend the Acts relating to the Scottish Herring Fisheries . . . In part; namely, So much as is inconsistent with this Act.
29 & 30 Vict. c. 85. .	An Act to facilitate the Establishment, Improvement, and Maintenance of Oyster and Mussel Fisheries in Great Britain.
30 & 31 Vict. c. 18. .	An Act for the Preservation and further Protection of Oyster Fisheries.

SALMON FISHING.

31 & 32 Vict. c. 123.

An Act to amend the Law relating to Salmon Fisheries in Scotland. [31*st July* 1868.]

WHEREAS an Act was passed in the twenty-fifth and twenty-sixth years of Her present Majesty, chapter ninety-seven, intituled *An Act to regulate and amend the Law respecting the Salmon Fisheries of* Scotland; and another Act was passed in the twenty-sixth and twenty-seventh years of Her present Majesty, chapter fifty, intituled *An Act to continue the Powers of the Commissioners under the Salmon Fisheries* (Scotland) *Act until the First Day of* January *One thousand eight hundred and sixty-five, and to amend the said Act;* and another

Act was passed in the twenty-seventh and Twenty-eighth years of Her present Majesty, chapter one hundred and eighteen, intituled *An Act to amend the Acts relating to Salmon Fisheries in* Scotland; and it is expedient that the recited Acts should be amended, and further provision be made with respect to salmon fisheries in *Scotland:*

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

I. This Act may be cited for all purposes as 'The Salmon Fisheries '(*Scotland*) Act, 1868.'

II. The recited Acts and this Act shall be read and construed together as one Act.

III. Where in any district a District Board has not been constituted before the passing of this Act, it shall be lawful for any two proprietors of salmon fishings in the district, whether there be at the present time salmon in the waters of the district or not, to present a petition to the sheriff praying that a District Board may be constituted, and the sheriff shall thereupon direct the sheriff-clerk to make up a roll of the upper proprietors and a roll of the lower proprietors in the district, and the sheriff shall thereafter direct the sheriff-clerk to call a meeting of the upper proprietors, and also a meeting of the lower proprietors, at such time and place as he shall direct, and notice of such meeting shall be given by advertisement inserted once at least in two successive weeks in a newspaper printed or circulating in the county or counties in which the district is situated, and at the same time with the said notice the sheriff shall direct the sheriff's clerk also to intimate the time and place at which the first meeting of the Board shall be held after its election; and the upper proprietors and lower proprietors present at such separate meetings respectively shall elect members of the District Board in the manner provided in the first recited Act; and the first meeting of the said District Board shall be held at the time appointed by the sheriff as aforesaid, unless the upper proprietors and the lower proprietors agree together to appoint another time and place for the first meeting.

IV. The clerk of each District Board, constituted under the recited Acts or this Act, shall make up and keep rolls of the upper and lower proprietors in the district, and correct the same from time to time whenever a new valuation roll comes into force; and at any meeting of the District Board it shall be lawful for any person whose name has been erroneously struck out or omitted from the said roll to apply to the District Board to have his name entered therein, or for any person whose name is on the roll for the district to object to the name of any other person being entered or remaining on the said roll on the ground that he does not appear on the valuation roll to be qualified, or that he does not possess the requisite frontage to the river; and if it shall be proved to the satisfaction of the Board that such claim or such objection is well founded, the Board shall direct their clerk to enter or strike out the name accordingly, as shall appear to them just; and if any person shall be dissatisfied with the decision of the Board, he may

appeal by summary petition to the sheriff of the county within which the subjects affording his qualification, or the greater part thereof, are situated ; and the sheriff's decision shall be final, but in such appeal the jurisdiction of the sheriff shall not extend to questions of heritable right.

V. Where any fishery is not entered in the valuation roll, or where any fishery is entered in the valuation roll along with and as a part of other subjects, the county assessor shall, on being required by the clerk to the District Board, value and enter such fishery in the valuation roll separately from other subjects ; and where any fishery or rod fishing when let in the sea happens to be situate in two separate districts, the county assessor shall, on being required by the clerk of either district, value and enter separately in the valuation roll the annual value of such fishery situate in the respective districts.

VI. No Act or proceeding of a District Board shall be questioned on account of any vacancy or vacancies in their body, and no defect in the qualification or appointment of any person or persons acting as a member or members of such Board shall be deemed to vitiate any proceedings of such Board in which he or they have taken part.

VII. The minutes of the proceedings of every meeting of a District Board shall be signed by the chairman ; and any minute of proceedings of any meeting of such Board, signed by the chairman of that meeting, shall be receivable in evidence in all legal proceedings without further proof; and, until the contrary is proved, every meeting of the Board in respect of which minutes have been so made and signed shall be deemed to have been duly convened and held, and all the members thereof to have been duly qualified. On requisition in writing by any two members of a District Board, the chairman shall be bound to convene a meeting of the Board within a fortnight of the date of the requisition, and the clerk of the Board shall give notice to each member, by circular, of the date of said meeting, and of the business to be brought before it.

VIII. The factor or mandatory of any proprietor of a fishery (including the factor or mandatory of the Commissioners or Commissioner of Woods in charge of the land revenues of the crown in *Scotland* where Her Majesty is the proprietor of a fishery) shall be qualified to be and may be elected as a member of any District Board, and shall have all the powers and privileges which the proprietors by whom he is appointed could have had under the recited Acts or this Act ; and any member of any District Board appointed under the powers of the recited Acts, or any of them, or this Act, may from time to time nominate and appoint, by writing under his hand, any person as the mandatory of such member to attend, act, and vote at any meeting of such District Board; and every such nomination and appointment shall subsist until recalled by the member making the same.

IX. Any District Board at any meeting, of which due notice has been given by advertisement at least ten days previously in a newspaper printed or circulated in the county or counties in which the district is situated, may resolve to petition the Secretary of State to do any of the following things :

(1.) To vary the annual close time in such district, provided that such annual close time shall always be one hundred and sixty-eight days:

(2.) To vary the weekly close time in such district, or in different parts of such district, provided that the weekly close time or such weekly close times shall always be thirty-six hours:

(3.) To alter the regulations with respect to the observance of annual or weekly close time in so far as they relate to such district:

(4.) To alter the regulations with respect to the construction and use of cruives and cruive dykes or weirs within such district, provided such alterations do not injure the supply of water to any person entitled to use any existing cruive dyke as a dam dyke.

And such petition, authenticated by the signature of the chairman of the Board, shall be transmitted to the Secretary of State by the clerk of the Board, after notice thereof has been given by advertisement once at least in each of two successive weeks in a newspaper printed or circulating in the county or counties in which the district is situated, and the Secretary of State may direct such inquiry to be made, and such notice thereof to be given, as he shall think fit.

And any alteration petitioned for in such manner by any District Board may be made by the Secretary of State, if he shall see fit, by order under his hand, and such order shall be published in the *Edinburgh Gazette*, and a copy of the *Edinburgh Gazette* containing such order shall be evidence of the same having been made; but the Secretary of State shall not entertain any such petition until it shall be proved to him, by such evidence as he shall think satisfactory, that notice of such petition has been duly given in manner aforesaid: Provided that such alteration shall not interfere with any rights held at the time of the passing of this Act under royal grant or charter, or possessed for time immemorial.

X. The bye-laws contained in the schedules (A.), (B.), (C.), (D.), (E.), (F.), and (G.) to this Act annexed (*a*) shall in all respects be held to have been duly made and published, but only in so far as consistent with and authorized by the recited Acts, and to such extent shall be as valid and binding as if the same had been expressly enacted in this Act: provided always, that notwithstanding the terms of the said recited Acts, any such bye-law shall be valid and binding as aforesaid although it includes in one district more than one river, or makes provisions with respect to a district including more than one river, or to two or more districts having assigned to them a common estuary.

XI. Notwithstanding anything contained in or authorized by this Act or the recited Acts, no regulations with respect to the construction and alteration of mill dams or lades or waterwheels so as to afford a reasonable means for the passage of salmon, shall apply to streams or branches or tributaries of rivers which are of such small size as not to be frequented by salmon, nor to dam dykes which in their existing

(*a*) These bye-laws are printed at pp. 342–404 *supra*.

state at the time and in the average state of the river do not obstruct the passage of salmon; and where in any existing intake lade there is at present a sufficient sluice, it shall not be necessary to remove said sluice to a higher point of the lade, nor to construct an additional sluice at the intake thereof; and it shall be lawful to lift any heck from out the water as a means of protection during a flood, or when the river is encumbered with ice, or with weeds and floating leaves to an extent to choke the heck.

XII. And whereas the royal burgh of *Montrose* is supplied with water from sources adjoining the river *North Esk*, which water is raised to the point of distribution by means of water power derived from a watercourse or mill-lade having its intake at *Morphie* dam dyke on the said river, and returning to the river at a point near the lower north water bridge on the said river, commonly called the mill-lade of *Kinnaber*, and great inconvenience would arise from the application to the said watercourse or mill-lade of certain of the bye-laws by this Act made valid and binding: Be it enacted, That nothing in the said bye-laws, or in this or in the recited Acts, or any of them, as to the placing of hecks or gratings, or the shutting of sluices at the intake of mill-lades or watercourses, shall apply to the said watercourse or mill-lade known as the mill-lade of *Kinnaber*, excepting in so far as regards the lowering of the intake sluice during the weekly close time, and then only so as to leave a free space during such close time of not less than eighteen inches between the bottom of the sluice and the sill or bed of such mill-lade or watercourse.

XIII. The District Board shall by agreement (which agreement any heir of entail or other person under disability is hereby empowered to make with such Board, and to implement), have power to purchase, for the purpose only of removal, any dam, weir, cruives, or other fixed engines they may deem it expedient to remove for the benefit of the fisheries in their district, and to remove any natural obstructions to the passage of fish in the bed of a river, or to attach a fish pass to any waterfall, and generally to execute such works, do such acts, and incur such expenses as may appear to them expedient for the protection or improvement of the fisheries within their district, the increase of salmon, or the stocking of the waters therewith; but it shall not be lawful for the Board to pay to any member of the Board any salary or fees for his acting in any way as a member of or under the Board; provided that such powers of purchase shall not be exercised unless the resolution of the District Board shall have been consented to by the proprietors representing four-fifths in value of the fishings on the roll in the district.

XIV. Any expenses incurred by the District Board in carrying out the provisions of this Act may be defrayed out of the assessment which they are empowered to lay on by the first recited Act; and any District Board may, for the purpose of defraying any charge or expenses incurred by them under the powers of the last section, with the consent of the Secretary of State, borrow and take up at interest, on the credit of any assessment they are authorized by the first recited Act to impose, such sum of money as may be necessary for defraying

such charge or expenses, not exceeding the amount of two years assessments authorized by the said first recited Act.

XV. Sections eleven and twelve of the first recited Act are hereby repealed, and in place thereof it is enacted as follows:

Every person who commits any of the following offences,—

(1.) Who fishes for, takes, or attempts to take, or aids or assists in fishing for, taking, or attempting to take, salmon during the annual close time by any means other than rod and line;

(2.) Who fishes for, takes, or attempts to take, or aids or assists in fishing for, taking, or attempting to take, salmon (except during Saturday or Monday by rod and line) during the weekly close time, or contravenes in any way any bye-law in force regarding the observance thereof;

(3.) Who fishes for or takes, or aids in fishing for or taking, salmon during the annual close time by means of rod and line at a period not sanctioned by the bye-laws in force in the district;

(4.) Who fishes for, or aids in fishing for, salmon with a net having a mesh contrary to any bye-law;

(5.) Who sets or uses, or aids in setting or using, a net or any other engine for the capture of salmon when leaping at or trying to ascend any fall or other impediment, or when falling back after leaping;

(6.) Who does any act for the purpose of preventing salmon from passing through any fish pass, or taking any salmon in its passage through the same;

(7.) Who wilfully puts, or causes to be put, or neglects to take reasonable precautions to prevent the discharge of, any sawdust, or any chaff, or any shelling of corn, into any river;

(8.) Who in any way contravenes any bye-law,

shall for every offence be liable to a penalty not exceeding five pounds, and to a further penalty not exceeding two pounds for every salmon taken or killed in an illegal manner, and shall forfeit the salmon so taken; and all penalties imposed under this Act and the recited Acts, or any of them, shall be in addition to the costs and expenses of prosecution and conviction.

XVI. The thirteenth section of the first recited Act shall hereafter be read and construed as if the words 'or who shall discharge into 'any river sawdust' therein contained were struck out of the section.

XVII. Every person that shall use any light or fire of any kind, or any spear, leister, gaff, or other like instrument, or otter, for catching salmon, or any instrument for dragging for salmon, or have in his possession a light or any of the foresaid instruments under such circumstances as to satisfy the Court before whom he is tried that he intended at the time to catch salmon by means thereof, shall be liable to a penalty not exceeding five pounds, and shall forfeit any of the foresaid instruments and any salmon found in his possession: but this section shall not apply to any person using a gaff as auxiliary to angling with a rod and line.

XVIII. Every person that shall use any fish roe for the purpose of fishing, and every person that shall buy, sell, or expose for sale, or

have in his possession, any salmon roe, shall for every such offence be liable to a penalty not exceeding two pounds, and shall forfeit all salmon roe found in his possession; but this section shall not apply to any person who uses or has in his possession salmon roe for artificial propagation or scientific purposes, or gives any reason satisfactory to the Court by whom he is tried for having the same in his possession.

XIX. Every person who shall wilfully take or destroy any smolt or salmon fry, or shall buy, sell, or expose for sale, or have in his possession, the same, or shall place any device or engine for the purpose of obstructing the passage of the same, or shall wilfully injure the same, or shall wilfully injure or disturb any salmon spawn, or disturb any spawning bed, or any bank or shallow in which the spawn of salmon may be, or during the annual close time shall obstruct or impede salmon in their passage to any such bed, bank, or shallow, shall be liable to a penalty not exceeding five pounds for every such offence, and shall forfeit every rod, line, net, device, or engine used in committing any such offence, and shall forfeit any smolt or salmon fry that may be found in his possession; but nothing herein contained shall apply to acts done for the purpose of artificial propagation of salmon or other scientific purpose, or in the course of cleaning or repairing any dam or mill-lade, or in the course of the exercise of rights of property in the bed of any river or stream: Provided also, that the District Board may, with the consent of all the proprietors of salmon fisheries in any river or estuary, adopt such means as they think fit for preventing the ingress of salmon into narrow streams in which they or the spawning beds are from the nature of the channel liable to be destroyed, but always so that no water rights used or enjoyed for the purposes of manufactures, or agricultural purposes or drainage, shall be interfered with thereby.

XX. Every person who shall wilfully take, fish for, or attempt to take, or aid or assist in taking, fishing for, or attempting to take, any unclean or unseasonable salmon, or who shall buy, sell, or expose for sale, or have in his possession, any unclean or unseasonable salmon, shall be liable to a penalty not exceeding five pounds in respect of each such fish taken, sold, or exposed for sale, or in his possession, and shall forfeit every such fish; but this section shall not apply to any person who takes such fish accidentally, and forthwith returns the same to the water with the least possible injury, or to any person who takes, or is in possession of such fish for artificial propagation or scientific purposes.

XXI. Any person who shall buy, sell, or expose for sale, or have in his possession, any salmon taken within the limits of this Act between the commencement of the latest and the termination of the earliest annual close time which is in force at the time for any district, shall be liable to a penalty not exceeding five pounds, and to a further penalty not exceeding two pounds for every salmon so bought, sold, or exposed for sale, or in his possession; and any salmon so bought, sold, or exposed for sale, or in his possession, shall be forfeited; and the burden of proving that any such salmon was caught beyond the limits

of this Act shall lie on the person selling or exposing the same for sale, or having the same in his possession.

XXII. All salmon intended for exportation shall be entered for that purpose with the proper officer of customs at the port or place of intended exportation before shipment thereof; and any salmon shipped or exported or brought to any wharf, quay, or other place for exportation between the commencement of the latest and the termination of the earliest annual close time for any district in *Scotland* contrary to this section shall be forfeited, unless proof be given to the satisfaction of the Commissioners of Customs of the salmon having been legally captured, and the person so illegally shipping or exporting or bringing the same for exportation shall be liable to a penalty not exceeding two pounds for every salmon so shipped or exported or brought for exportation; and no salmon caught by rod and line during the annual close time for net-fishing shall be shipped, exported, or brought for exportation under the like penalties; and any officer of Customs may during the aforesaid period open any parcel entered or intended for exportation, or brought to any quay, wharf, or place for that purpose, and suspected by him to contain salmon, and may detain any salmon found in such parcel until proof is given to the satisfaction of the Commissioners of Customs of the salmon being such as may be legally exported; and if the salmon before such proof is given become unfit for human food, the Officer of Customs may destroy the same.

XXIII. The proprietor or occupier of any fishery shall, within thirty-six hours after the commencement of the annual close time, remove and carry from such fishery, and from the landing places and grounds adjacent thereto, all boats, oars, nets, engines, and other tackle used or employed by such occupier in taking salmon, and effectually secure the same so as to prevent their being used in fishing until the end of the close time, with the exception of such boats and oars as may be used for angling; and the proprietor or occupier of any cruive shall within thirty-six hours after the commencement of the annual close time remove and carry away all the hecks, rails, and inscales, and effectually secure the same so as to prevent their being used in fishing, and shall also remove all planks and temporary fixtures and other obstructions to the free passage of fish through the cruive; and any proprietor or occupier who neglects to remove and carry away and effectually secure in manner aforesaid any boat, oar, net, engine, or other tackle, or any heck, rail, or inscale, or any obstruction to the passage of salmon through a cruive, shall forfeit every engine and thing not removed and carried away in compliance with the terms of this section, and for every day during which he suffers any such engine or thing to remain unremoved beyond the period prescribed in this Act he shall be liable to a penalty not exceeding ten pounds: Provided always, that nothing herein contained shall apply to any ferry boat, or prevent any proprietor of lands from continuing any boat for the use of himself or of his family if such boat shall have the name of the proprietor painted thereon, and be secured, when not in use for lawful purposes, by lock and key.

XXIV. The proprietor, or when let the occupier, of every fishery

at which stake, weir, or stake nets, fly nets, or bag nets are used, shall in regard to such nets do all acts required by any bye-law in force within the district in which such fishery is situated for the due observance of the weekly close time; and if any such proprietor or occupier shall omit to do any act so required he shall incur the following penalties; that is to say,

1. He shall forfeit the net or nets with regard to which such omission has occurred:
2. He shall for each weekly close time during any part of which such omission has occurred pay, in respect of each net to which the proof of such omission applies, a sum not exceeding ten pounds, and a further sum not exceeding two pounds for every salmon taken or killed by means of such nets during the said weekly close time.

XXV. In order the better to carry out the provisions of the Act of the seventh and eighth years of Her present Majesty, chapter ninety-five, it shall be lawful for any water bailiff, constable, watcher, or officer of any District Board, or any police officer, to search all boats, boat tackle, nets, or other engines, and all receptacles, whether at sea or on shore, which he or they may have reason to suspect may contain salmon captured in contravention of the said last-mentioned Act, and to seize all salmon found in the possession of persons not having a right to fish salmon, and the possession of such salmon shall be held *primâ facie* evidence of the purpose of the possessor to contravene the provisions of the said last-mentioned Act: Provided also, that the words 'the said recited Act' contained in the second section of the last-mentioned Act shall be read and construed as if they meant and included this Act and the Acts recited therein.

XXVI. It shall be lawful for the sheriff or any justice of the peace, upon an information on oath that there is probable cause to suspect any breach of the provisions of this Act to have been committed on any premises, or any salmon illegally taken, or any illegal nets or other engines or instruments, to be concealed on any premises, by warrant under his hand to authorize and empower any water bailiff, constable, watcher, or other officer of the Board, or police officer, to enter such premises for the purpose of detecting such offence, or such concealed fish or instruments, at such time or times in the day or night as in such warrant may be mentioned, and to seize all illegal nets, engines, or other instruments, or any salmon illegally taken, that may be found on such premises; provided that no such warrant shall continue in force for more than one week from the date thereof.

XXVII. Any water bailiff, constable, watcher, or officer of the Board, or any police officer, may enter and remain upon any lands in the vicinity of any river or of the sea coast during any hour of the day and night for the purpose of preventing a breach of the provisions of this or the recited Acts, or of detecting the persons guilty of any breach thereof, and no such person entering and remaining upon such lands as aforesaid shall be deemed to be a trespasser: Provided always, that the owner or occupier of such land may require such person to quit, and such person may on refusal be proceeded against

as a trespasser, and shall be liable to the penalties, unless he shall prove to the satisfaction of the sheriff or justices before whom he is tried that he had reason to apprehend a breach of the law had been or was about to be committed.

XXVIII. Any member of the District Board, or water bailiff, constable, watcher, or officer of the Board, or any police officer, may examine any dam, weir, cruive, or fixed engine within the limits of the district, or any artificial watercourse in that district; and any owner or occupier of any such dam, weir, cruive, or fixed engine, or artificial watercourse, refusing access thereto to any such member of the Board, water bailiff, constable, or officer of the Board, or any police officer, shall be liable to a penalty not exceeding five pounds for each offence: and any member of the Board, or water bailiff, constable, watcher, or officer of the Board, or any police officer, may search all boats, nets, baskets, or bags and other instruments used in fishing for salmon, or which he may have reason to suspect may contain salmon illegally taken, and he may seize all illegal nets, or nets being used illegally, and other instruments of fishing, and all fish and other articles liable to be forfeited under the provisions of this Act, and generally may act as a constable for the enforcement of the provisions of this Act, and when so acting shall be deemed to be a constable.

XXIX. It shall be lawful for any person, without any warrant or other authority than this Act, *brevi manu* to seize and detain any person who shall be found committing any offence contained in the first six sub-divisions of the fifteenth section, or in the seventeenth, eighteenth, nineteenth, twentieth, twenty-first, and twenty-second sections of this Act, and to carry such person before any sheriff or justice of the peace or other magistrate, or to deliver such person to a constable, who is hereby required to carry such person before a justice of the peace or other magistrate, who shall forthwith examine and discharge or commit such person until caution *de judicio sisti* be found, as the case may require.

XXX. All offences under this Act may be prosecuted, and all penalties incurred under this Act may be recovered, before any sheriff or any two or more justices acting together, and having jurisdiction in the place where the offence was committed, at the instance of the clerk of any District Board, or of any other person; and it shall be lawful for the sheriff or justices to whom any petition or complaint is presented to proceed in a summary form, and to grant warrant for bringing the persons complained against before him or them, or for citing them to appear before him or them, and on proof on oath by one or more credible witness or witnesses, or confession of the person accused, or other legal evidence, forthwith to determine and give judgment in such complaint, without any written pleadings or record of evidence other than a record of the charge and of the judgment pronounced thereon, and to grant warrant for the recovery of all penalties and expenses decerned for by poinding, and imprisonment for any period not exceeding six months; and any person who shall think himself aggrieved by any judgment of the sheriff or justices pronounced in any complaint or prosecution under this Act may appeal to the Court

of Justiciary at their next Circuit Court, or where there is no Circuit Court to the High Court of Justiciary at *Edinburgh*, in the manner and under the rules, limitations, conditions, and restrictions contained in the Act passed in the twentieth year of the reign of His Majesty King *George* the Second, chapter forty-three, for taking away and abolishing heritable jurisdictions in *Scotland*, with this variation that such person shall, in place of finding caution in the terms prescribed by the said Act, be bound to find caution to pay the penalty and expenses awarded against him by the judgment appealed from in the event of such appeal being dismissed, together with any additional expenses that shall be awarded by the Circuit Court or Court of Justiciary on dismissing such appeal; and it shall not be competent to appeal from or bring the judgments of any sheriff or justices acting under this Act under review by advocation, or in any other way than as herein provided.

XXXI. Every person found guilty of any offence against any of the provisions of the recited Acts or any of them, or of this Act, shall, in addition to any other penalties to which he may be liable, at the discretion of the sheriff or justices before whom he has been tried, forfeit every boat, net, rod, line, gaff, spear, leister, or other article or instrument of whatever kind which has been or may be used in fishing for or in taking salmon, and which is found in the possession of such person at the time of committing such offence, and which was capable of being used in the commission of such offence, and also any salmon that may be found in his possession.

XXXII. Where any salmon, net, rod, line, or other article directed to be forfeited under this Act has been seized by any constable, water bailiff, watcher, or other officer appointed by the Board or by any police officer, the sheriff or justices may order the same to be destroyed or handed over to the District Board, or to the person prosecuting, to be disposed of as such Board or person prosecuting may think fit.

XXXIII. The penalty in respect of any offence under this Act, or the recited Acts, shall, on a conviction for a second offence, be not less than one half of the greatest penalty capable of being imposed in respect of such offence, and on a conviction for a third or subsequent offence the greatest amount of penalty mentioned in this Act shall be imposed; and any boat, net, rod, line, or other article or thing used in the commission of any offence under this Act, or found in the possession of the offender, shall be forfeited.

XXXIV. No justice of the peace shall be disqualified from hearing any case arising under this Act by reason of his being a member of a District Board; provided that no justice shall be entitled to hear any case in respect of an offence committed on his own fishery.

XXXV. Where any offence under this Act is committed in or upon any waters forming the boundary between any two counties, such offence may be prosecuted before a sheriff or two justices of the peace in either of such counties, and any offence committed under this Act on the sea coast, or at sea beyond the ordinary jurisdiction of any sheriff or justices of the peace, shall be held to have been

committed within the body of any county abutting on such sea coast, or adjoining such sea, and may be tried and punished accordingly.

XXXVI. It shall not be lawful to fish for or take salmon at any place or by any mode prohibited by any statute relating to salmon or salmon fisheries in *Scotland* subsisting and in force at the date of this Act; and nothing contained in this Act or in any bye-law shall render legal any mode of fishing which was or would have been illegal at the date of the passing of this Act.

XXXVII. Any proprietor of a fishery shall be held to have a good title and interest at law to sue by action any other proprietor or occupier of a fishery within the district, or any other person who shall use any illegal engine or illegal mode of fishing for catching salmon within the district.

XXXVIII. In giving judgment on any application or complaint under this Act the sheriff or justices may find the person complaining or complained against liable in expenses, and may decern for payment of the same.

XXXIX. All penalties and expenses incurred under this Act, or under any bye-law or regulation made under the authority thereof, may be recovered by ordinary action or in the Small Debt Court of the sheriff.

XL. The penalties incurred under this Act shall in all prosecutions at the instance of the clerk of any District Board, or by any person authorized by any District Board, be payable to and recoverable by such clerk, and shall in all other cases be paid and applied in such manner as the sheriff or justices may direct; and all penalties and expenses received by the clerk, and the proceeds of the sale of any articles seized and directed to be sold as before provided, shall be applied by the District Board towards defraying the expenses incurred by them in carrying into execution the provisions of this Act.

XLI. This Act shall not extend to *England* or *Ireland;* and no part of this Act, except the thirteenth, eighteenth, twentieth, and thirty-third sections thereof, shall apply to the river *Tweed* as defined by the *Tweed* Fisheries Act, 1859; and the penalties imposed by this Act, so far as applicable to the river *Tweed* and its fisheries, shall be recoverable and applicable in the same manner as penalties imposed by the *Tweed* Fisheries Act, 1857; and the sections of this Act hereby applied to the river *Tweed* shall be read and taken as if they formed part of such last-mentioned Act and of *Tweed* Fisheries Amendment Act, 1859; and the words 'District Board' in the said sections shall signify the Board of Commissioners of the river *Tweed.*

XLII. So much of the twenty-second section of 'The Salmon 'Fisheries (*Scotland*) Act, 1862,' as confers on District Boards the power 'to make and alter from time to time regulations for the pre-'servation of the fisheries in the district,' and the twenty-fifth section of said Act, are hereby repealed.

XLIII. This Act shall not affect any action or prosecution which has been or may hereafter be begun in respect of any liability incurred or offence committed before the passing of this Act.

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